TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 127.

THE SECURITY LAND AND EXPLORATION COMPANY, PLAINTIFF IN ERROR,

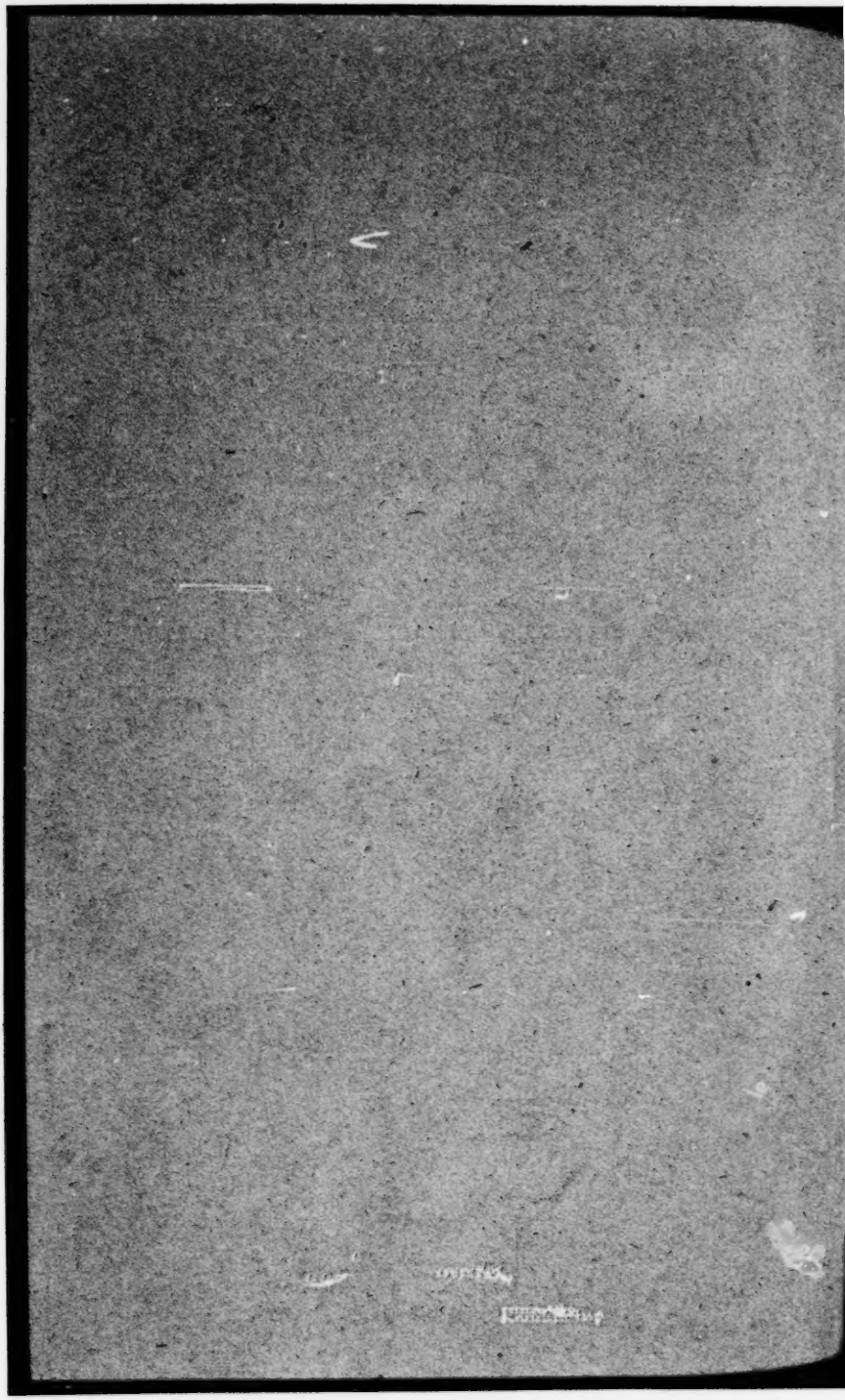
vs.

G. A. BURNS AND MARY L. BURNS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

FILED SEPTEMBER 6, 1902.

(18,659.)



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INDEX.

	Original.	Print.
Petition for writ of error	*a*	1
Waiver of bond	*b*	1
Order allowing writ of error	*c*	2
Writ of error	*e*	2
Citation	*h*	3
Acceptance of service of citation	*i*	3
Assignment of errors	*j*	4
Stipulation to substitute attorneys	*n*	5
Stipulation as to records on appeal, &c	*p*	6
Assignment of errors	*s*	7
Transcript from district court of St. Louis county	1	8
Complaint in Burns case	1	8
Answer in Burns case	2	9
Reply in Burns case	4	10
Complaint in Weckey case	5	10
Answer in Weckey case	6	11
Reply in Weckey case	7	11
Settled case	8	12
Stipulation to try two cases together	8	12
Stipulation of facts	9	12
Plaintiff's offers	17	16
Defendants' offers	18	17
Plaintiff's further offer	20	18

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 31, 1903.

	Original.	Print
Defendants' further offer	20	18
Admissions, &c	21	18
Amendment of statement	23	19
Stipulation as to statement	23	19
Judge's certificate of case	24	20
Exhibit C—Field notes	24	20
D—Certified copies of papers from General Land Office	62	45
Commissioner's certificate	62	45
Letter of Surveyor General Stewart to Commissioner, April 18, 1879	63	45
Letter of Surveyor General Stewart to Commissioner, June 2, 1879	64	46
Affidavit of John McGuire	65	46
Letter, Pressnell to Stewart, May 5, 1879	67	47
Letter, Pressnell to Stewart, May 31, 1879	68	48
Letter, Commissioner to Stewart, June 11, 1879	69	48
Defendants' Exhibit 1—Certified copy of papers from General Land Office	70	49
Commissioner's certificate	70	49
Letter, Secretary to Commissioner, January 19, 1895	71	49
Defendant's Exhibit 2—Certified copy of paper from General Land Office	78	53
Commissioner's certificate	78	53
Letter, Commissioner to surveyor general, October 31, 1895	79	54
Acceptance of service of proposed case	82	55
Findings of fact	83	56
Conclusions of law	92	61
Opinion	93	61
Notice of motion to amend findings	114	72
Stipulation as to motion to amend findings	115	72
Motion to amend findings	115	73
Exhibit A—Diagram	116*a*	73
B—Diagram	116*b*	73
Order amending findings	119	75
Judgment in Burns case	122	76
Judgment in Weckey case	123	77
Notice of appeal in Burns case	125	78
Notice of appeal in Weckey case	126	79
Waiver of bond	127	79
Endorsement on record on appeal	128	79
Syllabus	129	80
Opinion	130	80
Judgment	147	88
Order for judgment	149	89
Minute entry of argument	151	90
Clerk's certificate	154	91

a To the Honorable Charles M. Start, chief justice of the supreme court of the State of Minnesota:

The petition of Security Land & Exploration Company respectfully represents, that it is a corporation duly organized and doing business under the laws of the State of Minnesota; that on or about the 22nd. day of April A. D. 1902, there was entered in and by the supreme court of the State of Minnesota, the same being the highest court of said State, a final judgment in a certain case therein pending between the said Security Land & Exploration Company, appellant, in the supreme court of Minnesota, (plaintiff in the district court, the court of original jurisdiction in said State), and G. A. Burns and Mary L. Burns, respondents in said supreme court of Minnesota, and defendants in the said State district court, said judgment being in favor of the said respondents, and in affirmance of a judgment previously rendered by said State district court in their favor. That in said judgment of said supreme court of Minnesota, and in the proceedings had prior thereto in said cause, certain errors were committed to the prejudice of this plaintiff, (appellant in said supreme court), all of which will more fully appear from the assignment of errors herewith submitted and filed, and from the certified transcript of the record in said cause herewith submitted. That in said cause a title and right was and is claimed by your petitioner under a statute of the United States, and by virtue of a commission held and authority exercised under the United States, and the decision and judgment in said cause is against the said title and right specifically set up and claimed by your petitioner under the said statute, commission and authority.

Therefore this plaintiff (appellant in said supreme court of Minnesota) prays that a writ of error may issue in this behalf to the said supreme court of the State of Minnesota for the correction of the errors so complained of, and that a transcript of the record,
b proceedings and papers in this cause duly authenticated, may be sent to the said Supreme Court of the United States.

BILLSON & CONGDON,
Attorneys for Appellant.

August 8th, 1902.

In the event of the allowance of the foregoing petition, bond on appeal is hereby waived, and it is stipulated that the writ of error in said cause, if issued, shall have like effect as though a supersedeas bond had been filed.

August 7th, 1902.

WILSON & VAN DERLIP AND
R. R. BRIGGS,
Att'ys for Respondent.

c Supreme Court of the United States.

SECURITY LAND & EXPLORATION COMPANY, Plaintiff in Error,
vs.
G. A. BURNS and MARY L. BURNS, Defendants in Error.

On reading the foregoing petition for writ of error and the stipulation thereto annexed and the assignment of errors and transcript of the record therewith submitted, the said writ is hereby allowed, supersedeas bond having been waived by the said stipulation.

Dated August 8th, 1902.

CHAS. M. START,
Chief Justice of the Supreme Court of the State of Minnesota.

d [Endorsed:] 12912 Security Land and Exploration Company, appellant, *vs.* G. A. Burns and Mary L. Burns, respondents. Application for allowance of writ of error and stipulation waiving supersedeas bond. Filed August 9th, 1902 D. F. Reese clerk.

e THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Minnesota, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Minnesota before you or some of you, being the highest court of the said State in which a decision could be had in the said suit between The Security Land & Exploration Company, plaintiff, (appellant in said supreme court of Minnesota), and G. A. Burns and Mary L. Burns, defendants, (respondents in said supreme court of Minnesota), wherein was drawn in question the construction of a clause of a statute or commission held or authority exercised under the United States, and the decision was against a title and right specially set up and claimed by the said Security Land & Exploration Company under the said statute, commission and authority, a manifest error hath happened to the great damage of the said Security Land & Exploration Company, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the sixth (6) day of September A. D. 1902, in the said Supreme Court to be then and there held, that, the

record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of
f the said Supreme Court the ninth (9th) day of August, in the year of our Lord nineteen hundred and two.

HENRY D. LANG,
Clerk of U. S. Circuit Court for the District of Minnesota.

Allowed by

CHAS. M. START,
Chief Justice.

[Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.]

g [Endorsed:] 12912. Supreme Court of the United States. Security Land and Exploration Company, plaintiff in error, *vs.* G. A. Burns and Mary L. Burns, defendants in error. Writ of error.

h The Supreme Court of the United States to G. A. Burns and Mary L. Burns, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States to be holden at the city of Washington, on the 6th day of September next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Minnesota, wherein Security Land & Exploration Company is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States this 8th day of August, in the year of our Lord nineteen hundred and two.

CHAS. M. START,
Chief Justice of the Supreme Court of Minnesota.

i [Endorsed:] Original Supreme Court of the United States. Security Land and Exploration Company, plaintiff in error, *vs.* G. A. Burns and Mary L. Burns, defendants in error. Citation. Personal service of the within citation this 12th day of August 1902 is hereby admitted at Duluth, Minnesota, on behalf of the defendants in error. Wilson & Van Derlip and R. R. Briggs attorneys for defendants in error.

j Supreme Court of the State of Minnesota.

SECURITY LAND & EXPLORATION COMPANY, Appellants,
vs.
G. A. BURNS and MARY L. BURNS, Respondents.

Assignment of Errors.

The appellant in this action (plaintiff in the district court) in connection with its petition for a writ of error, makes the following assignment of errors, which it avers occurred upon the hearing of said cause in this court, to-wit:—

The court erred in rendering judgment affirming the judgment herein by the district court of the eleventh judicial district of the State of Minnesota in favor of the defendants in said district court (respondents here), and in adjudging that said respondents recover of said appellants their costs and disbursements, whereas the judgment of said district court should have been reversed on account of the following errors occurring upon the trial of said cause in said district court, viz.:

(1.) In overruling the plaintiff's objection to that part of the second paragraph of the stipulation commencing with the words "but no evidence has ever been found," as incompetent, irrelevant and immaterial, and as not admissible under the pleadings. (Printed Record, fols. 53–54.)

(2.) In overruling the plaintiff's objections to that portion of paragraph 3 of the stipulation which had not been offered by the plaintiff, commencing with the words "there is no evidence that," as incompetent, irrelevant, immaterial and not admissible under the pleadings. (Fol. 54.)

(3.) In overruling the plaintiff's objections to the 5th numbered paragraph of the stipulation as incompetent, irrerevant, immaterial and inadmissible under the pleadings. (Fol. 55.)

k (4.) In overruling the plaintiff's objections to the 6th paragraph of the stipulation, as being incompetent, irrelevant, immaterial and inadmissible under the pleadings. (Fol. 56.)

(5.) In overruling the plaintiff's objections upon the same grounds, to the 12th paragraph of the stipulation. (Fol. 57.)

(6.) In overruling the plaintiff's objections, upon the same grounds, to the certified copy of the decision of the Secretary of the Interior of January 19, 1895. (Fols. 59–60.)

(7.) In overruling the plaintiff's objections, upon the same grounds, to the copy of the order from the Commissioner of the General Land Office, dated October 31, 1895, directing the surveyor general to make a contract for the survey of these lands. (Fols. 60–61.)

(8.) In overruling the plaintiff's objections, upon the same grounds, to the stipulation or admission, that pursuant to the directions of the Secretary of the Interior a hearing was had before the surveyor

general of Minnesota, of which hearing the plaintiff had notice and at which it appeared by counsel and objected to the hearing for want of jurisdiction in the General Land Office, and that plaintiff took no further part in that hearing, and that the plaintiff had notice of the further proceedings leading up to the order for the survey shown in Defendant's Exhibit "2." (Fols. 61–63.)

(9.) In finding that the side lines of lot one extended southerly to Ely lake would appropriate substantially all the frontage of said lake within said section. (Fols. 266–267.)

(10.) In finding that if the side lines of lot 7 were extended easterly only a few feet of lake frontage would be contained in said lot. (Fols. 271–272.)

(11.) In its conclusion of law that the pretended meander line of Ely or Cedar Island lake as the same is described in the purported field notes, and as delineated upon the Government plat is the boundary line of the land owned by plaintiff in lots 3, 5, 6 and 7 in section 4, [illegible]nship 57, range 17. (Fols. 275–276.)

(12.) In its conclusion of law that the defendants are not in possession of any part of the land in said section four belonging to the plaintiffs and do not withhold from the plaintiff any land of which it is the owner or to the possession of which it is entitled. (Fol. 276.)

(13.) In its conclusion of law that the defendants are entitled to judgment, that plaintiff take [illegible]othing in said action, and for their costs and disbursements. (Fol. 277.)

August 8th, 1902.

BILLSON & CONGDON,
Attorneys for Appellants.

[Endorsed:] 12912. Supreme court. State of Minnesota. Security Land & Exploration Company, appellant, *vs.* G. A. Burns and Mary L. Burns, respondents. Assignment of errors. Filed August 9, 1902. D. F. Reese clerk.

Supreme Court, State of Minnesota, April Term, 1902.

SECURITY LAND AND EXPLORATION COMPANY, Appellant,
vs.
G. A. BURNS and MARY L. BURNS, Respondents.

It is stipulated in the above entitled cause that Messrs. Billson, Congdon & Dickinson may be and are substituted as attorneys of record for the appellant in the above entitled cause.

Dated March 6th, 1902.

JOHN G. WILLIAMS &
BILLSON, CONGDON & DICKINSON,
Attorney- for Appellant.
WILSON & VAN DERLIP AND
R. R. BRIGGS, *Attorneys for Respondents.*
BILLSON, CONGDON & DICKINSON,
Substituted Attorneys for Appellant.

o (Endorsement:) 12912 Supreme court State of Minnesota Security Land & Exploration Company appellant *vs.* G. A. Burns *et al.*, respondents. Stipulation Filed Mar. 8 1902 Darius F. Reese, clerk.

p *Stipulation.*

STATE OF MINNESOTA:

In Supreme Court.

SECURITY LAND AND EXPLORATION COMPANY, Appellant,
vs.
G. A. BURNS and MARY L. BURNS, Respondents.

SECURITY LAND AND EXPLORATION COMPANY, Appellant,
vs.
HENRY WECKEY and ROSALINE S. WECKEY, Respondents.

Whereas an appeal is taken concurrently in both the above named cases; and

Whereas the settled case, the findings of fact and conclusions of law and memorandum of the court, the motion to amend the findings and the order amending the same are the same in both cases;

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys, that the settled case, the findings of fact and conclusions of law and memorandum, motion to amend findings and order amending findings, in the return in the case of Security Land and Exploration Company *vs.* G. A. Burns *et al.*, may, for the purposes of this appeal, be considered as
q the settled case, findings of fact and conclusions of law and memorandum of the court, motion to amend findings and the order amending the findings in the case of Security Land and Exploration Company *vs.* Henry Weckey *et al.*, and they are by reference hereby made a part of the return in said last named case with the same force and effect as if they were embodied in the return in said case.

And it is further stipulated and agreed that the printed paper book and the briefs in the said Burns case shall serve as the printed paper book in the said Weckey case, and that both said cases may be argued orally together as one case.

Dated at Duluth, Minn., this 1 day of March, 1902.

BILLSON, CONGDON & DICKINSON &
JOHN G. WILLIAMS,
Attorneys for Appellant.
WILSON & VAN DERLIP,
R. R. BRIGGS, *Attorneys for Respondents.*

r (Endorsement:) 12912–12913 Supreme court State of Minnesota Security Land and Exploration Company, appellant, *vs.* G. A. Burns *et ux.*, respondents Security Land and Exploration Company appellant *vs.* Henry Weckey *et ux.*, respondents Stipulation. Filed Mar. 5 1902 Darius F. Reese, clerk John G. Williams attorney for — suite 607 First National Bank building Duluth, Minn.

s *Assignments of Error.*

The court below erred:—

(1.) In overruling the plaintiff's objection to that part of the second paragraph of the stipulation commencing with the words "but no evidence has ever been found," as incompetent, irrelevant and immaterial and as not admissible under the pleadings. (Fols. 53–54.)

(2.) In overruling the plaintiff's objections to that portion of paragraph 3 of the stipulation which had not been offered by the plaintiff, commencing with the words "there is no evidence that," as incompetent, irrelevant immaterial and not admissible under the pleadings. (Fol. 54.)

(3.) In overruling the plaintiff's objections to the 5th numbered paragraph of the stipulation as incompetent, irrelevant, immaterial and inadmissible under the pleadings. (Fol. 55.)

(4.) In overruling the plaintiff's objections to the 6th paragraph of the stipulation, as being incompetent, irrelevant, immaterial and inadmissible under the pleadings. (Fol. 56.)

t (5.) In overruling the plaintiff's objections, upon the same grounds, to the 12th paragraph of the stipulation. (Fol. 57.)

(6.) In overruling the plaintiff's objections, upon the same grounds to the certified copy of the decision of the Secretary of the Interior of January 19, 1895. (Fols. 59–60.)

(7.) In overruling the plaintiff's objections, upon the same grounds, to the copy of the order from the Commissioner of the General Land Office, dated October 31, 1895, directing the surveyor general to make a contract for the survey of these lands. (Fols. 60–61.)

(8.) In overruling the plaintiff's objections, upon the same grounds, to the stipulation or admission, that pursuant to the directions of the Secretary of the Interior a hearing was had before the surveyor general of Minnesota, of which hearing the plaintiff had notice and at which it appeared by counsel and objected to the hearing for want of jurisdiction in the G-neral Land Office, and that plaintiff took no further part in that hearing, and that the plaintiff had notice of the further proceedings leading up to the order for the survey shown in Defendants' Exhibit "2." (Fols. 61–63.)

(9.) In finding that the side lines of lot one extended southerly to Ely lake would appropriate southwesterly all the frontage of said lake within said section. (Fols. 266–267.)

u (10.) In finding that if the side lines of lot 7 were extended easterly only a few feet of lake frontage would be contained in said lot. (Fols. 271–272.)

(11.) In its conclusion of law that the pretended meander line of Ely or Cedar Island lake as the same is described in the purported field notes, and as delineated upon the Government plat is the boundary line of the land owned by plaintiff in lots 3, 5, 6 and 7 in section 4, township 57, range 17. (Fols. 275–276.)

(12.) In its conclusion of law that the defendants are not in possession of any part of the land in said section four belonging to the plaintiffs and do not withhold from the plaintiff any land of which it is the owner or to the possession of which it is entitled. (Fol. 276.)

(13.) In its conclusion of law that the defendants are entitled to judgment, that plaintiff take nothing in said action, and for their costs and disbursements. (Fol. 277.)

1 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1902.

STATE OF MINNESOTA, *County of St. Louis,* } ss:

District Court, Eleventh Judicial District.

SECURITY LAND AND EXPLORATION COMPANY, Appellant,
vs.
G. A. BURNS and MARY L. BURNS, Respondents.

SECURITY LAND AND EXPLORATION COMPANY, Appellant,
vs.
HENRY WECKEY and ROSALINE S. WECKEY, Respondents.

Complaint in Burns Case.

The plaintiff for its cause of action against the defendants, alleges:

2 1. That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Minnesota and that the defendants are husband and wife.

2. That the plaintiff is seized in fee simple and entitled to the immediate possession of each and all of the following described pieces or parcels of land situate in the county of St. Louis and State of Minnesota, to-wit:

All those portions of lots 3, 5, 6 and 7, in section 4, township 57 north of range 17 west, according to the Government survey thereof, in said county and State, which lie west of a line drawn north and south through the center of said section 4, except the pine timber thereon.

3. That the defendants are in the possession of each of said parcels of land and unlawfully withhold the same from the plaintiff.

Wherefore plaintiff demands judgment:

1. For the possession of said premises.

2. For $100.00 damages for withholding the same, together with the costs and disbursements of this action.

CASH, WILLIAMS & CHESTER,
Attorneys for Plaintiff.

Suite 405 First National Bank bldg., Duluth, Minn.

(Complaint duly verified.)

Answer in Burns Case.

The defendants above named, for their answer to the complaint of the plaintiff in this action:

3 1. Admit that plaintiff is a corporation and that defendants are husband and wife as therein alleged.

2. Deny that they have any knowledge or information sufficient to form a belief as to whether or not the plaintiff is seized in fee simple, or entitled to the immediate or any possession of either or any of the tracts of land described in said complaint.

3. Deny that defendants are, or either of them is, in possession of any part of the land described in the complaint.

4. For further answer, the defendants allege that lots three (3), five (5), six (6) and seven (7) in section four (4) of township fifty-seven (57) north of range seventeen (17) west, in St. Louis county, Minnesota, are Government lots surveyed to a certain irregular line more particularly and exactly shown by the plat hereto attached and marked Exhibit "A" and hereby made a part of this answer; and defendants allege that lot three (3) named in said complaint contains 50.87 acres of land and no more, that lot five (5) contains 34.75 acres of land and no more, that lot six (6) contains 30.5 acres of land and no more, and that lot seven (7) contains 25.25 acres of land and no more, all according to the Government survey thereof.

And defendants allege that all the land lying south and east of the regular line delimiting said Government lands as hereinbefore alleged is unsurveyed Government land, and that plaintiff has no right, title, interest or estate therein or in any part thereof.

4 And defendants further allege that all said unsurveyed land has never been surveyed or subdivided by the United States Government and is a part of the Government domain; that the same is high, rolling timber-land; that it is not now and never has been any part of any body of water surveyed or meandered, or otherwise, and that the title to all of said land is in the United States, subject only to the rights of the defendants and of other *bona fide* settlers thereon, as such rights may exist under the laws of the United States.

Wherefore, defendants demand judgment that plaintiff take nothing in this action; that defendants have judgment against the plaintiff for the dismissal of this action and for their costs and disbursements herein.

WILSON & VAN DERLIP,
Attorneys for Defendants.

No. 335 Lumber Exchange, Minneapolis, Minn.

(Answer duly verified.)

(The plat referred to as "Exhibit A," in the above answer, is the same plat as is marked "Exhibit B" in the findings of fact herein.)

Reply in Burns Case.

And now again before the court comes the above named
5 plaintiff, and replying to the defendants' answer herein, denies each and every allegation of new matter therein contained.

CASH, WILLIAMS & CHESTER,
Attorneys for Plaintiff.

Suite 405 First National Bank bldg., Duluth, Minn.

(Reply duly verified.)

Complaint in Weckey Case.

The plaintiff for its cause of action against the defendants alleges:

1. That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Minnesota, and that the defendants are husband and wife.

2. That the plaintiff is seized in fee simple and entitled to the immediate possession of each and all of the following described pieces or parcels of land situate in the county of St. Louis and State of Minnesota, to-wit: All that portion of the S. E. ¼ of section 4, township 57 north of range 17 west, said county and State, which lies westerly and southerly of a straight line drawn from the center of said section to the southeast corner thereof, the same being portions of lots 1, 3, 5, 6, 7 and 8 of said section 4, according to the Government survey thereof, except the merchantable pine timber thereon.

3. That the defendants are in the possession of each of said parcels of land, and unlawfully withhold the same from the plaintiff.

Wherefore plaintiff demands judgment: 1. For the possession of said premises; (2) for $100 damages for withholding the same,
6 together with the costs and disbursements of this action.

CASH, WILLIAMS & CHESTER,
Attorneys for Plaintiff.

Suite 405 First National Bank bldg., Duluth, Minn.

(Complaint duly verified.)

Answer in Weckey Case.

The defendants for their answer to the complaint of the plaintiff:

1. Admit that the plaintiff is a corporation and that the defendants are husband and wife, as therein alleged.

2. Deny each and every other allegation in said complaint contained.

3. For further answer defendants allege that the lands described in the complaint are unsurveyed Government lands which are not now and never have been part of any body of water, meandered or otherwise, except the southeast corner of the tract described in the complaint, which lies within and under the waters of a deep, navigable and permanent lake commonly known as Cedar lake or Ely lake; that no portion of the land described in the complaint has ever been surveyed, platted or patented by the United States, and that the title to all of the same is vested in the United States, subject only to the rights of the defendants and others therein as *bona fide* settlers on said lands; that all of said land except the portion lying in said lake, as aforesaid, is high, wooded, agricultural land.

Wherefore defendants demand judgment against the plaintiff:

1. That it take nothing by this action.

2. For defendants' costs and disbursements herein.

WILSON & VAN DERLIP,
Attorneys for Defendants.

No. 335 Lumber Exchange, Minneapolis, Minn.

(Answer duly verified.)

Reply in Weckey Case.

And now again before the court comes the above named plaintiff, and replying to the defendants' answer herein denies each and every allegation of new matter therein contained.

CASH, WILLIAMS & CHESTER,
Attorneys for Plaintiff.

Suite 405 First National Bank bldg., Duluth, Minn.

(Reply duly verified.)

8 SECURITY LAND & EXPLORATION COMPANY, Plaintiff,
vs.
G. A. BURNS and MARY L. BURNS, Defendants,

and

SECURITY LAND & EXPLORATION COMPANY, Plaintiff,
vs.
HENRY WICKEY and ROSALIND S. WICKEY, Defendants.

Settled Case.

The above entitled causes were regularly on the March, 1901 calendar of said court, and were duly brought on for trial before Hon. William A. Cant, one of the judges of said court, without a jury, at 9:30 o'clock a. m., on Tuesday, April 2, 1901, Messrs. Billson, Congdon & Dickinson and John G. Williams, Esq., appearing on behalf of the plaintiff, and Messrs. Wilson & Vanderlip and R. R. Briggs, Esq., appearing on behalf of the defendants.

It was stipulated by the respective counsel that the two cases should be tried together, an order to that effect was made by the court, and the cases were so tried. Upon such trial, evidence was offered and proceedings had as follows:

Plaintiff's counsel produced and read to the court written stipulations which had been entered into between the respective parties, which were in full as follows:

9 It is hereby stipulated by and between the attorneys for the respective parties in each of the actions above entitled that the following may be taken as facts which need not be otherwise proved upon the trial of either of said actions in the district court of St. Louis county, subject, however, to any objections which may be made by either party at the trial to the admissibility of such facts or any of the same in the case; but it is expressly stipulated that this stipulation of facts shall have no force or effect except upon the trial of each of said actions to be had at the March, 1901, term of said district court, unless otherwise hereafter expressly and in writing agreed, nor preclude proof of other or additional facts upon said trial.

Stipulated Facts.

1. In 1876, township fifty-seven (57), north of range seventeen (17) west in St. Louis county, was surveyed by order of the U. S. General Land Office under a contract made by the surveyor general for the State of Minnesota with one H. S. Howe, who was by said contract constituted a United States deputy surveyor for said purpose. By virtue of said contract, said Howe was required, and undertook and agreed to survey the said township, and to set posts, and to mark all section and quarter-section corners throughout said township where

the same could be marked upon the ground, and accurately to meander and establish upon the ground meander posts of all lakes and streams found to exist within said township.

2. Under said contract, said Howe ran and marked the exterior lines of said township, except the south township line, which had been previously surveyed, and set posts at all section and quarter-section corners on said lines. A section corner was also marked at the northwest corner of section 36 in said township (which corner may or may not have been located and marked by said Howe). Said Howe also set a meander post upon the north line of said township as surveyed by him where said line, running west from the northeast corner of the township, first encountered the shore of Ely lake, or Cedar Island lake, as it is sometimes called; but no evidence has ever been found upon the ground, though carefully searched for by experienced land lookers and surveyors, that any interior section corners or quarter-posts were ever established, or any bearing-trees ever marked in said township by said Howe as such deputy surveyor under his said contract, or that any meander line of said lake was ever in fact run or marked by said Howe, or that any meander post was ever located or set around said lake other than hereinbefore stated.

3. Said Howe made and filed with the U. S. surveyor general of the State of Minnesota what purported to be field notes of a survey by him of said township under said contract, purporting to give the lengths and directions of all interior section lines in said township, the locations of all section and quarter-section posts, and bearing-trees thereof, the character of the soil and timber in said township, and all other data and information required by the Statutes of the United States and the rules of the U. S. General Land Office, to be ascertained and reported by deputy surveyors in the due course of making surveys of public lands. There is no evidence that any of the purported facts or data contained in said field notes of said Howe, returned by him as aforesaid, were ascertained by him by any actual survey upon the ground for the ascertainment thereof, except in regard to the exterior lines of said township.

4. From said field notes returned by said Howe, as aforesaid, it appeared that there existed in the northerly part of said township, lying in sections two (2), three (3), four (4), nine (9), ten (10) and eleven (11) thereof, a lake, heretofore referred to, known as Ely or Cedar Island lake, with a surface area, as indicated by said field notes, of about eighteen hundred (1800) acres; that the shores of said lake, in the southeasterly portion thereof, were low and swampy, and that it was the only lake in the township, except a small lake in the westerly part of section eighteen (18), which extends into the adjoining township and is crossed by the western line of said township fifty-seven (57).

5. In fact, instead of having an area of about 1800 acres, Ely or Cedar Island lake then was and still is a body of water of not to exceed eight hundred (800) acres in area. It is a permanent, deep and

navigable lake, running to a depth of sixty-five (65) feet in some places, and having high, steep and heavily timbered banks, except around the outlet thereof. Between the actual water line of said lake and the meander line thereof, as returned by the field notes of said deputy surveyor Howe, there were in 1876, and still are,
12 about one thousand (1000) acres of high, tillable land, which has never been a part of the lake, and which was and is heavily timbered with trees of more than a century's growth, and growing down to the water's edge. Certain rocky islands then existed and still exist in said lake, rising but a few feet above the surface of the water, upon which there was at the time of said survey, and still is, a heavy growth of timber which cannot grow in water, and of great age; and the water of said lake was not, at the time of survey, and has not since been higher than the surface of said islands. In said township there existed at the time of said survey, and still exist, numerous lakes of large size and of a deep and permanent character, at least three of which are from a mile and a half to two miles in length, with sharply defined and wooded banks, and which would be crossed by the section lines described by Howe in his field notes, none of which lakes is referred to, or purported to be meandered or described in said field notes.

6. The defendants in each of the actions above entitled, respectively, have been in actual and continuous occupancy of a portion of the land lying between the meander line described and returned by said Howe in his said field notes, and as located upon the Government plat of said township and the actual water line of said Ely or Cedar Island lake since the spring of 1892; said occupancy has been under the claim that the lands occupied by the defendants, respectively, were and are unsurveyed Government lands that have not been patented by the Government; and the defendants have
13 upon the lands occupied by them, respectively, made valuable and lasting improvements.

7. The said field notes and report of survey made and filed by said Howe were approved by the surveyor general of the United States for the district of Minnesota August 7th, 1876, and a plat of such township was made in accordance with such field notes by or under the direction of said surveyor general, and was officially approved by him on said 7th day of August, 1876, and a duly certified copy thereof was transmitted by him to, and was filed in, the proper local United States land office on the 24th day of August, 1876; and another duly certified copy of the same was by him forwarded to the General Land Office of the United States where the same was filed August 23rd, 1876, and was by that office accepted as representing a correct survey of said township, and as the official plat thereof.

A copy of such plat is hereto annexed and marked "Exhibit A."

Such survey and official plat were the only survey and plat of said township, or of the lands in question, ever made by or under the authority of the United States Government.

Exhibit "B," hereto attached and made a part hereof, correctly

delineates the meanderings of said Ely or Cedar Island lake, the outer meander line representing that marked upon the said official plat and as shown by the field notes of said Howe, and the inner meander line representing the lake as it actually exists, and as it did exist in 1876 when said field notes were made and filed.
14 A portion of the land lying between said lines is the land involved in these actions.

Exhibit "C," hereto attached and made a part hereof, is a true and correct copy of the said field notes returned by Deputy Surveyor Howe.

8. Between December, 1879, and March, 1887, all the lands in said township shown upon the Government plat as lands were patented and conveyed by the United States, pursuant to the various laws relating to the disposal of public lands. All such patents contained, after the description of the lands embraced therein and a statement of the acreage, the following clause, usual in such patents: "According to the official plat of the survey of the said lands returned to the General Land Office by the surveyor general." The plat thus referred to in the patents was the official plat hereinbefore referred to, of which Exhibit "A" is a copy.

9. Government lots three (3), five (5), six (6) and seven (7) of said section four (4), as returned by said survey and shown upon said plat, were pre-empted pursuant to the provisions of law relating to the pre-emption of public lands, subsequent to the filing of the official plat as aforesaid in the General Land Office, and were patented to such pre-emptors in or prior to the year 1888; the acreage of such lots, respectively, as specified in such patents and as marked upon said official plat, was as follows: Lot three (3), fifty and 37–100 (50.37) acres; lot five (5), thirty-four and 75–100 (34.75) acres; lot six (6), thirty and 5–10 (30.5) acres; and lot seven (7), twenty-five and 25–100 (25.25) acres. By divers mesne conveyances
15 from said patentees, the title to said lots became vested in the plaintiff in the year 1891 and prior to the commencement of these actions, and the plaintiff is still the owner thereof, and of the full quantity of land above specified as contained therein, if bounded by said original meander line.

10. In like manner, Government lots one (1) and eight (8) in section four (4), as returned by said surveyor general and shown upon said official plat, were pre-empted by and patented to certain other persons, which patents were executed in or prior to the year 1888; by divers mesne conveyances from said patentees, the title of said lots became vested, prior to the year 1892, in Simon J. Murphy and others by whom a quit-claim deed was executed and delivered to the plaintiff in the year 1892, and prior to the commencement of these actions, purporting to grant and quit-claim to the plaintiff the following described premises, to-wit: That part of the southeast quarter (S. E. ¼) of said section four (4) lying southerly and westerly of a line drawn from the center of said section to the southeast corner thereof, and also all the interest of the grantors in the west half of said section.

No part of said described premises has ever been conveyed or attempted to be conveyed by the plaintiff.

At the same time, the plaintiff executed and delivered to said Simon J. Murphy and others a quit-claim deed purporting to convey to said grantees the following described property, to-wit: That part of the east half (E. ½) of said section four (4) lying northerly and easterly of a line drawn from the center of said section to the
16 southeast corner thereof.

11. By reason of the ownership of said Government lots, and the execution and delivery of the quit-claim deed mentioned in paragraph numbered 10, plaintiff claims to be the owner of the land occupied by the respective defendants in the actions above entitled, which lies between the meander line reported and described by said Howe, as aforesaid and as delineated on said official plat, of said Government lots numbered one (1), three (3), five (5), six (6), seven (7) and eight (8) and the actual water line of said Ely or Cedar Island lake.

12. The defendants claim, and each of them claims, that said meander line reported and described by said Howe as aforesaid, and delineated upon said Government plat of said township, is the boundary line of the land owned by the plaintiff as aforesaid, and that plaintiff has no right, title, interest or estate in the land occupied by either of said defendants, or in any part thereof.

Dated April 2, 1901.

(Signed) BILLSON, CONGDON & DICKINSON &
JOHN G. WILLIAMS,
Attorneys for Plaintiff.

(Signed) WILSON & VANDERLIP &
R. R. BRIGGS, *Attorneys for Defendants.*

17 Plaintiff then offered in evidence the first numbered paragraph of the above stipulation, which was received.

Plaintiff offered in evidence the second numbered paragraph of said stipulation, down to and including the words, near the middle thereof, "as it is sometimes called," which was received.

The plaintiff then offered in evidence the third numbered paragraph of said stipulation, down to and including the words, "in due course of making surveys of public lands," which evidence was received.

The plaintiff offered in evidence the fourth numbered paragraph of said stipulation, which was received.

The plaintiff offered in evidence paragraph 7 of said stipulation, excepting the portion thereof commencing with the words, "Exhibit B." and ending with the words, "in these actions," including the plat therein referred to and marked "Exhibit A," the same being the Government township plat embracing the lands in question, and being the same plat a copy of which is attached to the findings of the court in these causes. Such offer also embraces what is referred to in said stipulation as "Exhibit C," being a copy of the field notes

returned by said deputy surveyor Howe, all of which was received in evidence.

The plaintiff offered in evidence the eighth numbered paragraph of said stipulation, the first sentence in which was objected to by defendants upon the ground that the same was immaterial and
18 irrelevant, which objection was over-ruled by the court, the evidence received, and the defendants duly excepted.

The plaintiff then offered in evidence the ninth numbered paragraph of said stipulation, which was received.

Plaintiff then offered in evidence the tenth numbered paragraph of said stipulation, which was objected to by the defendants as immaterial, irrelevant and not tending to prove title. These objections were over-ruled and the evidence received, to which ruling defendants duly excepted.

Plaintiff then offered in evidence the eleventh numbered paragraph of said stipulation, which was received.

Thereupon, the plaintiff rested its case.

The defendants then moved that said causes be dismissed upon the ground that the plaintiff had not established any cause of action.

This motion was denied, to which ruling the defendants duly excepted.

Defendants then offered in evidence portions of the said stipulation which had not been offered by the plaintiff, as follows:

That part of the second paragraph of said stipulation commencing with the words "but no evidence has ever been found." The plaintiff objected to such evidence as incompetent, irrelevant, immaterial and not admissible under the pleadings. These objections were over-ruled by the court, to which ruling the plaintiff duly excepted.

The defendants offered in evidence that portion of paragraph three which had not been offered by the plaintiff, commencing with
19 the words "there is no evidence that," which evidence was objected to by the plaintiff upon the ground that the same was incompetent, irrelevant, immaterial and not admissible under the pleadings. These objections were over-ruled by the court, and the plaintiff duly excepted thereto.

Defendants offered in evidence the fifth numbered paragraph of said stipulation, which evidence was objected to by the plaintiff upon the ground that the same was incompetent, irrelevant, immaterial and not admissible under the pleadings. Such objections were over-ruled by the court, and the plaintiff duly excepted.

The defendants offered in evidence the sixth numbered paragraph of said stipulation, which was objected to by the plaintiff upon the ground that the same was incompetent, irrelevant, immaterial, and inadmissible under the pleadings.

Such objections being over-ruled by the court, the plaintiff duly excepted to such ruling.

The defendants offered in evidence that portion of paragraph seven of said stipulation which had not been offered by the plaintiff, commencing with the words "Exhibit B hereto attached" and

ending with the words "in these actions;" this part embracing also the plat marked "Exhibit B" referred to in said stipulation, and a copy of which is attached to the findings of the court in said cause, being the plat showing the actual location of Cedar Island lake. This was objected to by the plaintiff on the ground that the same was incompetent, immaterial and irrelevant, and not admissible under the pleadings.

20 The defendants offered in evidence paragraph twelve of the stipulation, to which the plaintiff made the same objections heretofore expressed, which were overruled by the court, and to which ruling the plaintiff duly excepted.

Thereupon, the defendants rested their cases.

The plaintiff then offered in evidence a certified copy of certain proceedings had in the office of the land commissioner and of the surveyor general of the State of Minnesota, which is hereto annexed and marked "Exhibit D;" that the purpose of offering this exhibit was to show that whatever irregularities, defects or incorrectness there may have been in the survey, the Government had notice of the same.

The defendants objected to the reception of this evidence on the ground that it was not proper rebutting evidence nor competent for the purpose for which it was offered, and that it was irrelevant and immaterial to any issue in the case. These objections were overruled, and defendants duly excepted.

The plaintiff then again rested its case; whereupon the defendants offered in evidence a certified copy of a decision of the Secretary of the Interior of the United States, dated January 19, 1895, to be considered in connection with the evidence last offered by the plaintiff. This was objected to by the plaintiffs as being incompetent, irrelevant and immaterial, and inadmissible under the pleadings, which objections were overruled and the plaintiff duly excepted. A copy of such evidence is hereto attached, marked "Exhibit 1."

21 The defendants then offered in evidence a copy of the order from the Commissioner of the General Land Office, dated October 31, 1895, addressed to the United States surveyor general, directing him to make a contract for the survey of these lands. A copy of this instrument is hereto attached and marked "Exhibit 2." Plaintiff objected to such evidence upon the same grounds as those last above stated, which objections were overruled, and to such ruling the plaintiff duly excepted.

It was then admitted by counsel for the respective parties, subject to the objections (on the part of the plaintiff, that the same was incompetent, irrelevant, immaterial and not admissible under the pleadings), that pursuant to the directions of the Secretary of the Interior in the above "Exhibit 1," a hearing was had before the surveyor general of the State of Minnesota, of which hearing the plaintiff in these actions had notice, and at which it appeared by counsel and objected to the hearing taking place upon the ground that the General Land Office had no jurisdiction in the premises, and that

plaintiff took no further part in that hearing; that plaintiff had notice of further proceedings leading up to the order for the survey shown in Defendants' "Exhibit 2," above referred to. Such fact was received in evidence, the plaintiff's objections thereto being overruled, to which ruling plaintiff duly excepted.

It was further admitted by counsel for the respective parties that no survey had ever been made pursuant to the direction of the Commissioner of the General Land Office shown in the foregoing
22 "Exhibit 2," but that at the instance of the owners of certain Government lots in section four (4) and other sections in said township, the making of a survey was restrained by a decree of the United States circuit court for the district of Minnesota, from which decree an appeal was then pending at the instance of the Government of the United States and had not been submitted to the circuit court of appeals or settled.

The case was then closed, and after argument by the respective parties, was submitted to the court for decision; and after consideration of the same by the court, the court made its findings of fact and conclusions of law shown in the record in said causes.

The foregoing statement is hereby made and proposed as a case in the cases herein entitled as constituting a complete statement and record of all the evidence presented at the trial of such causes, of the objections thereto and rulings of the court thereon, and of the exceptions by the respective parties to such ruling, and of all the proceedings in said causes not otherwise appearing of record, excepting that by consent of the parties there is omitted from such record the field notes therein referred to, the facts concerning which, as set forth herein, are to be accepted in place of said field notes, with the same effect as though such field notes showing such facts had been formally included herein.

BILLSON, CONGDON & DICKINSON AND
JOHN G. WILLIAMS, *Attorneys for Plaintiff.*

23 The defendants proposed an amendment to the above proposed case, to wit: that Exhibit C, being the field notes introduced in evidence, be embodied in full, and the same was done and is found as Exhibit C, hereof.

The plaintiff submitted a motion which is on file in the causes, to amend the findings in certain respects. That after argument by respective counsel and consideration thereof, the court made and filed an order granting the motion to amend in part, and denying it in part.

It is stipulated that the above statement of facts in the causes herein entitled, as above amended, constitute a complete statement and record of all the evidence presented at the trial of such causes, of the objections thereto and the rulings of the court thereon, and of the exceptions by the respective parties to such rulings, and of the proceedings in said causes not otherwise appearing of record; and

it is stipulated that the court may sign and allow the above as the settled case in each of the above entitled causes.

Dated December 18, 1901.

BILLSON, CONGDON & DICKINSON AND
JOHN G. WILLIAMS, *Attorneys for Plaintiff.*
WILSON & VANDERLIP AND
R. R. BRIGGS, *Attorneys for Defendants.*

24 Pursuant to the above stipulation, and the forogoing case being examined and found conformable to the truth and to contain all the evidence offered and received, and all the proceedings had and the objections made, together with the rulings thereon, the same is hereby allowed and signed as the settled case in each of the said actions, and directed to be filed as part of the record of each of them.

Dated December 18, 1901.

WM. A. CANT,
District Judge.

EXHIBIT C.

I, Henry S. Howe, having been appointed a deputy surveyor of the lands of the United States, in Minnesota, do solemnly swear that I will well and faithfully, and to the best of my skill and ability, execute the duties confided to me, pursuant to a contract with James H. Baker, surveyor general of public lands, in Minnesota, bearing date the 26th day of April, 1876, according to the laws of the United States, and the instructions received from the said surveyor general.

HENRY S. HOWE.

Subscribed and sworn to by the above named Henry S. Howe, before me a notary public, for Ramsey county, in the State of Minnesota, this 5 day of May, 1876.

[NOTARIAL SEAL.]

I. N. CARDOZO,
Notary Public, Minn.

25 I, Frank D. Howe, and I, Burt Martin, do solemnly swear that I will faithfully execute the duties of chain carrier; that I will level the chain upon uneven ground, and plumb the tally pins, whether by sticking or dropping the same; that I will report the true distance to all notable objects, and the true length of all lines that I assist in measuring, to the best of my skill and ability.

FRANK D. HOWE.
B. MARTIN.

Subscribed and sworn to by the above named persons before me, a notary public, for Ramsey county, in the State of Minnesota, this 6th day of May, 1876.

[NOTARIAL SEAL.]

HENRY S. HOWE,
Notary Public.

I, Orrin N. Parker, do solemnly swear that I will well and truly perform the duties of axman, according to the instructions given me, and to the best of my skill and ability.

ORRIN N. PARKER.

Subscribed and sworn to by the above named person, before me, a notary public, for Ramsey county, in the State of Minnesota, this 6th day of May, 1876.

HENRY S. HOWE,
Notary Public.

[NOTARIAL SEAL.]

Tp. 57 N., R. 17 W.

Field notes of the survey of the sub-division lines and meanders of township 57 north of range 17 west of the 4th principal meridian, in the State of Minnesota, by Henry S. Howe, deputy sur-
26 veyor, under his contract, No. —, bearing date the 26th day of April, 1876.

Survey commenced June 20th, 1876, and
Completed June 30th, 1876.

Having surveyed the exterior lines of this township, I begin at the post on the 7th correction line, the corner to sections 35 and 36, tp. 57 N. R. 17 W. and run as follows:

Chains North between sec. 35 & 36,
Var. 10 degrees 20 minutes east.

40.00 Set a post for ¼ sec. cor. from which
Tam. 7 N. 10 E. 35 lks.
Tam. 8 N. 25 W. 40 lks.

40.20 Enter swamp brs. E. & W.

55.50 Leave swamp brs. E. & W.

68.02 Left bank St. Louis river, east. Set a post for corner to fractional secs. 35 & 36 from which fir 8 S. 59 E. 12 lks.
W. pine 18 S. 41 W. 13 lks.
To ascertain the distance across the river on this line, I run a base N. 47 degrees 51 minutes E. 63 lks. to a point from which the flag in line on right bank bears N. 17 degrees 12 minutes west, I find the distance to be 1.93 chains.

69.95 Set a post on right bank for corner to fractional sections 35 & 36 from which
W. pine 20 N. 23 E. 6 links.
Fir 8 N. 66 W. 11 lks.

80.00 Set a post for cor. to sections 25, 26, 35 & 36 from which
Fir 5 N. 14 E. 32 lks.
Blk. pine 7 N. 34 W. 20 lks.

27 Fir 3 S. 25 W. 16 lks.
Birch 8 S. 65 W. 20 lks.
Land rolling. Soil 3d rate.
Timber: Spruce, birch, aspen, tam., maple & pine.
Undergrowth, aspen, fir & alder.

East on a random line between sections 25 & 36.
Var. 10 degrees E.

4.42 Right bank St. Louis river, south, set a post for cor. to fractional sections 25 & 36 from which
Birch 5 S. 85 W. 22 lks.
Pine 5 N. 22 E. 11 lks.
To ascertain the distance across the river on this line, I run a base N. 48 E. 1.00 chains to a point from which the flg. in line on left bank brs. S. 68 degrees 40 minutes E. I find the distance to be 2.46 chains.

6.88 Set a post on left bank for cor. to fractl. sects. 25 & 26 from which
Birch 6 N. 80 E. 20 lks.
Birch 8 S. 10 W. 12 lks.

40.00 Set temp. ¼ sec. cor.

80.10 Intersect east boundary line at corner to sections 25 & 36 from which corner I run
West on a true line between sections 25 & 36

40.05 Set a post for ¼ section corner from which
Aspen 10 N. 52 W. 16 lks.
Birch 5 S. 26 E. 26 lks.

80.10 The corner to sections 25, 26, 35 & 36.
Land rolling. Soil 3d rate.
Timber: Birch, spruce, aspen, tam., maple & pine.

28 Undergrowth the same & fir.

North between sections 25 & 26.
Var. 10 degrees E.

6.30 Creek 6 lks. runs S. E.

24.00 Enter swamp brs. N. E. & S. W.

40.00 Set a post for ¼ sec. cor. from which
Tam. 3 N. 25 W. 16 lks.
Tam. 4 N. 18 E. 10 lks.

80.00 Set a post for corner to sections 23, 24, 25 & 26, from which
Spruce 6 N. 55 E. 11 lks.

Spruce 4 N. 25 W. 20 lks.
Tam. 4 S. 19 W. 36 lks.
Tam. 3 S. 40 E. 18 lks.
Land level. Soil 3d rate.
Timber: Spruce, tam., birch & cedar.
Undergrowth the same.

East on a random line between sections 24 & 25.
Var. 10 degrees E.

40.00 Set temp. ¼ sec. cor.

80.35 Intersect east boundary 24 lks. north of cor. to sections 24 & 25 from which corner I run.

N. 89 degrees 50 minutes W. on a true line between sections 24 & 25.

40.17 Set a post for ¼ sec. cor. from which
Tam. 4 N. 10 E. 21 lks.
Tam. 3 S. 56 W. 13 lks.

80.35 The corner to sections 23, 24, 25 & 26.
Land level. Soil 3d rate.
Timber, small spruce & tam.
Undergrowth the same.

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29 North between sections 23 & 24.
Var. 9 degrees 45 minutes E.

40.00 Set a post for ¼ section cor. from which
Spruce 3 N. 31 W. 5 lks.
Spruce 4 N. 10 E. 7 lks.

41.00 Leave swamp brs. N. W. & S. E.

80.00 Set a post for corner to sections 13, 14, 23, & 24 from which
Tam. 8 N. 50 W. 50 lks.
Tam. 10 N. 22 E. 75 links.
Birch 8 S. 45 E. 65 links.
Birch 12 S. 25 W. 100 links.
Land level. Soil 3d rate.
Timber: Spruce, tamarac-, birch & aspen, mostly fire killed.
Undergrowth, aspen, fir & Norway pine.

East on a random line between sections 13 & 24.
Var. 9 degrees 50 minutes E.

40.00 Set temp. ¼ sec. cor.

80.23 Intersect east boundary 30 lks. north of corner to sections 13 & 24 from which corner I run
N. 89 degrees 47 minutes W. on a true line between sections 13 & 24.

40.12 Set a post for ¼ sec. cor. from which
Birch 8 N. 70 E. 22 lks.
Cedar 6 S. 28 W. 5 lks.

80.32 The corner to sections 13, 14, 23 & 24.
Land rolling. Soil 3d rate.
Timber: Birch, spruce, tamarac- & cedar, nearly all fire killed.
Undergrowth, aspen, N. pine & fir.

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30 North between sections 13 & 14.
Var. 9 degrees 40 minutes E.

20.00 Enter swamp brs. N. E. & S. W.

40.00 Set a post for ¼ sec. cor. from which
Spruce 4 N. 10 W. 22 lks.
Spruce 3 N. 46 E. 18 lks.

53.00 A creek 5 lks. wide runs west.

80.00 Set a post for corner to sections 11, 12, 13 & 14 from which
Tam. 3 N. 41 E. 17 lks.
Tam. 5 N. 74 W. 12 lks.
Tam. 3 S. 36 W. 14 lks.
Tam. 3 S. 29 E. 8 lks.
Land level & wet. Soil 3d rate.
Timber, small spruce & tamarac-.
Undergrowth, the same.

JUNE 20TH, 1876.

East on a random line between sections 12 & 13.
Var. 9 degrees 40 minutes E.

40.00 Set temp. ¼ sec. cor.
80.18 Intersect east boundary 26 lks. N. of corner to sections 12 & 13.
From which corner I run
N. 89 degrees 49 minutes W. on a true line between sections 12 & 13.
40.09 Set a post for ¼ sec. cor. from which
Tam. 4 N. 9 W. 21 lks.
Tam. 3 S. 62 E. 15 lks.
80.18 The corner to sections 11, 12, 13 & 14.
Land level & wet. Soil 3d rate.
Timber: Small spruce & tamarac-.
Undergrowth, the same.

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31 North between sections 11 & 12.
Var. 9 degrees 40 minutes E.

40.00 Set a post for ¼ sec. cor. from which
Tam. 5 N. 19 W. 6 lks.
Tam. 8 N. 80 E. 13 lks.
80.00 Set a post for corner to sections 1, 2, 11 & 12 from which
Tam. 4 N. 65 E. 8 lks.
Tam. 5 N. 40 W. 10 lks.
Tam. 3 S. 16 W. 6 lks.
Spruce 4 S. 66 E. 9 lks.
Land level & wet. Soil 3d rate.
Timber: Tamarac-, spruce & cedar.
Undergrowth, the same.

East on a random line between sections 1 & 12.
Var. 9 degrees 40 minutes E.

40.00 Set temp. ¼ sec. cor.
80.12 Intersect east boundary 20 lks. N. of the cor. to sections 1 & 12
From which corner I run
N. 89 degrees 51 minutes W. on a true line between sections 1 & 12.

40.06 Set a post for ¼ section corner from which
Cedar 10 N. 15 W. 26 lks.
Spruce 8 S. 76 W. 21 lks.
80.12 The corner to sections 1, 2, 11 & 12.
Land level & wet. Soil 3d rate.
Timber: Tamarac-, spruce & cedar.
Undergrowth, the same.

The line between sections 2 & 11 will strike "Cedar Island
32 lake" in less than 80.00 chains, I therefore run it west
on a true line between sections 2 & 11.
Var. 9 degrees 40 minutes E.
35.00 Intersect S. E. shore of Cedar Island lake brs. N. E. & S. W.
Set a post for cor. to fractional sections 2 & 11 from which
Cedar 5 N. 42 E. 19 lks.
Spruce 8 S. 38 E. 29 lks.
The corner to secs. 2, 3, 10 & 11 is in the lake & cannot be set.
Land level & wet. 3d rate.
Timber: Spruce, tamarac- & cedar.
Undergrowth, the same.

North on a random line between sections 1 & 2.
Var. 9 degrees 40 minutes E.
37.00 Creeks 6 lks. runs west.
40.00 Set temp. ¼ sec. cor.
58.00 Leave swamp brs. N. E. & S. W.
80.25 Intersect north boundary 28 lks. west of corner to sections 1 & 2.
From which corner I run
S. 0 degrees 12 minutes west on a true line between sections 1 & 2.
40.25 Set a post for ¼ section corner from which
Tam. 6 N. 32 E. 18 lks.
Spruce 7 S. 20 W. 24 lks.
80.25 The corner to sections 1, 2, 11 & 12.
Land level. Soil 3d rate.
Timber: Spruce, tamarac-, cedar, birch, aspen & pine.
Undergrowth, the same.

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33 North between sections 34 & 35.
Var. 10 degrees 20 minutes E.
7.00 Enter swamp brs. N. E. & S. W.
40.00 Set a post for ¼ section cor. from which
Tam. 3 N. 50 W. 11 lks.
Tam. 3 N. 65 E. 14 lks.
80.00 Set a post for corner to sections 26, 27, 34 & 35 from which
Tam. 7 N. 50 E. 18 lks.
Spruce 9 N. 20 W. 10 lks.

Spruce 10 S. 60 W. 9 lks.
Tam. 4 S. 10 E. 14 lks.
Land level. Soil 3d rate.
Timber: Spruce, tamarac-, cedar, birch.
Undergrowth, the same.

East on a random line between sections 26 & 35.
Var. 10 degrees E.

40.00 Set temp. ¼ sec. cor.
52.00 Leave swamp brs. N. E. & S. W.
79.86 Intersect N. & S. line 35 lks. north of cor. to secs. 25, 26, 35 & 36.
From which corner I run
N. 89 degrees 45 minutes W. on a true line between sections 26 & 35.
39.93 Set a post for ¼ section corner from which
Tam. [illegible] 37 W. 20 lks.
Spruce [illegible] S. 32 E. 10 lks.
79.86 The corner to sections 26, 27, 34 & 35.
Land level. Soil 3d rate.
Timber: Spruce, tamarac-, cedar, birch & aspen.
Undergrowth the same.

JUNE 21ST, 1876.

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34 N. between secs. 26 and 27.
Var. 10 degrees E.

40.00 Set a post for ¼ section cor. from which
Spruce 8 N. 52 W. 18 lks.
Tam. 5 N. 45 E. 9 lks.
80.00 Set a post cor. to sections 22, 23, 26 & 27 from which
Cedar 8 N. 25 E. 36 lks.
Spruce 10 N. 54 W. 17 lks.
Spruce 5 S. 72 W. 40 lks.
Tam. 3 S. 24 E. 18 lks.
Land level. Soil 3d rate.
Timber: Spruce, tamarac- & cedar.
Undergrowth, the same.

East on a random line between sections 23 & 26.
Var. 10 degrees E.

40.00 Set temp. ¼ sec. cor.
47.50 Creek 5 lks. runs S. E.
79.68 Intersect N. & S. line 40 lks. N. of cor. to sects. 23, 24, 25 & 26.
From which corner I run
N. 89 degrees 43 minutes W. on a true line between sections 23 & 26.
39.84 Set a post for ¼ section corner from which
Cedar 4 N. 11 W. 26 lks.

Spruce 6 S. 75 E. 9 lks.
79.68 The corner to sections 22, 23, 26 & 27.
Land level. Soil 3d rate.
Timber: Spruce, tamarac- & cedar.
Undergrowth the same.

North between sections 22 & 23.
Var. 10 degrees 10 minutes E.

35

15.00 Leave swamp brs. N. E. & S. W.
33.00 Enter swamp brs. N. W. & S. E.
40.00 Set a post for ¼ sec. cor. from which
Spruce 10 N. 11 W. 21 lks.
Spruce 7 S. 28 E. 3 lks.
72.50 Leave swamp brs. N. E. & S. W.
80.00 Set a post for cor. to sections 14, 15, 22 & 23 from which
Cedar 8 N. 82 E. 11 lks.
Birch 12 N. 50 W. 16 lks.
Birch 4 S. 65 W. 8 lks.
Spruce 10 S. 22 E. 19 lks.
Land level. Soil 3d rate.
Timber: Spruce, tamarac-, cedar, birch & aspen.
Undergrowth, the same and fir.

East on a random line between sections 14 & 23.
Var. 9 degrees 50 minutes E.

6.00 Enter swamp brs. N. E. & S. W.
35.00 Leave swamp brs. N. & S.
40.00 Set temp. ¼ sec. cor.
79.90 Intersect N. & S. line 32 lks. south of cor. to sections 13, 14, 23
& 24 from which corner I run
S. 89 degrees 46 minutes W. on a true line between sections 14 & 23.
39.95 Set a post for ¼ section cor. from which
Spruce 8 N. 59 W. 18 lks.
Birch 10 S. 18 W. 10 lks.
79.90 The corner to sections 14, 15, 22 & 23.
Land level. Soil 3d rate.
Timber: Spruce, birch, tamarac-, cedar & aspen.
Undergrowth, the same & fir.

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36 North between sections 14 & 15.
Var. 10 degrees E.

33.00 Creek 6 lks. runs S. W.
40.00 Set a post for ¼ section cor. from which
Fir 4 N. 70 W. 9 lks.
Fir 3 N. 56 E. 11 lks.

80.00 Set a post cor. to sections 10, 11, 14 & 15, from which
Cedar 6 N. 9 E. 12 lks.
Birch 14 N. 82 W. 15 lks.
Cedar 8 S. 38 W. 30 lks.
Aspen 12 S. 40 E. 27 lks.
Land rolling. Soil 3d rate.
Timber: Birch, spruce, aspen, cedar, tamarac- & maple.
Undergrowth, the same & fir.

East on a random between sections 11 & 14.
Var. 10 degrees E.

11.00 Enter swamp brs. N. & S.
40.00 Set temp. ¼ sec. cor.
79.85 Intersect N. & S. line 22 lks. south of cor. to sects. 11, 12, 13 & 14
From which corner I run
S. 89 degrees 51 minutes west on a true line between sections 11 & 14.
39.92 Set a post for ¼ sec. cor. from which
Spruce 3 N. 35 W. 18 lks.
Tam. 6 S. 30 W. 14 lks.
79.85 The corner to sections 10, 11, 14 & 15.
Land level. Soil 3d rate.
Timber: Tamarac-, spruce, cedar, birch, aspen & maple.
Undergrowth, the same.

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37 North between sections 10 & 11.
Var. 10 degrees E.

12.50 Stream 25 lks. runs S. W.
25.00 Enter swamp brs. N. E. & S. W.
40.00 Set a post for ¼ sec. cor. from which
Spruce 5 S. 74 W. 9 lks.
Spruce 8 S. 50 E. 11 lks.
47.00 Leave swamp brs. N. E. & S. W.
55.00 South shore of Cedar Island lake brs. E. & W.
Set a post for cor. to fractional sects. 10 & 11 from which
Cedar 8 S. 65 E. 28 lks.
Tam. 5 S. 20 W. 12 lks.
Lake extends from this point north across the twp. line.
Land rolling. Soil 3d rate.
Timber: Birch, spruce, aspen, cedar & tamarac-.
Undergrowth, the same.

JUNE 22, 1876.

North between sections 33 & 34.
Var. 10 degrees 15 minutes E.

27.50 Creek 6 lks. runs S. E.
40.00 Set a post for ¼ sec. cor. from which
Birch 4 N. 36 W. 26 lks.

Aspen 10 N. 45 E. 14 lks.
60.00 Enter swamp brs. N. E. & S. W.
80.00 Set a post corner to sections 27, 28, 33 & 34 from which
Cedar 5 N. 30 E. 45 lks.
Cedar 10 N. 68 W. 55 lks.
Cedar 5 S. 20 W. 15 lks.
Spruce 4 S. 70 E. 35 lks.
38 Land rolling. Soil 3d rate.
Timber: Birch, spruce, aspen, tamarac- & cedar.
Undergrowth, aspen, fir, pine & alder.

East on a random line between sections 27 & 34.
Var. 10 degrees E.
16.50 Leave swamp brs. N. E. & S. W.
39.50 Creek 5 lks. runs S. W.
40.00 Set temp. ¼ sec. cor.
46.00 Enter swamp brs. N. & S.
80.42 Intersect N. & S. line 60 lks. N. of cor. to sects. 26, 27, 34 & 35
From which corner I run
N. 89 degrees 34 minutes W. on a true line between sections 27 & 34.
40.21 Set a post for ¼ sec. cor. from which
Cedar 5 N. 40 W. 20 lks.
Spruce 4 S. 18 E. 29 lks.
80.42 The corner to sections 27, 28, 34 & 35.
Land level. Soil 3d rate.
Timber: Spruce, birch, tam., cedar & aspen.
Undergrowth, the same & fir.

North between sections 27 & 28.
Var. 9 degrees 50 minutes E.
40.00 Set a post for a ¼ sec. cor. from which
Cedar 10 N. 45 W. 10 lks.
Spruce 4 N. 56 E. 4 lks.
54.00 Leave swamp brs. N. E. & S. W.
65.00 Stream 25 lks. runs S. W.
80.00 Set a post for corner to sections 21, 22, 27 & 28 from which
Aspen 4 N. 56 E. 11 lks.
Aspen 3 N. 30 W. 40 lks.
39 Birch 10 S. 46 W. 10 lks.
Tam. 10 S. 36 E. 24 lks.
Land generally level. Soil 3d rate.
Timber: Spruce, tam., birch, cedar & aspen.
Undergrowth, the same.

East on a random line between sections 22 & 27.
Var. 9 degrees 35 minutes E.
7.50 Stream 25 lks. wide runs S. W.

39.00 Enter swamp brs. N. E. & S. W.
40.00 Set temp. ¼ sec. cor.
80.12 Intersect N. & S. line 24 lks. N. of cor. to sections 22, 23, 26 & 27 from which corner I run
N. 89 degrees 50 minutes W. on a true line between sections 22 & 27.
40.06 Set a post for ¼ sec. cor. from which
Cedar 10 S. 80 E. 15 lks.
Spruce 12 N. 45 W. 17 lks.
80.12 The corner to sections 21, 22, 27 & 28.
Land level. Soil 3d rate.
Timber: Tamarac-, spruce, cedar, birch & aspen.
Undergrowth, the same.

North between sections 21 & 22.
Var. 9 degrees 40 minutes E.
15.00 Enter swamp brs. N. E. & S. W.
40.00 Set a post for ¼ sec. cor. from which
Tam. 6 N. 50 E. 14 lks.
Tam. 8 N. 45 W. 26 lks.
61.50 Leave swamp brs. N. W. & S. E.
80.00 Set a post for corner to sections 15, 16, 21 & 22 from which
Birch 4 N. 42 W. 24 lks.
Fir 3 N. 30 E. 36 lks.
40 Fir 5 S. 70 E. 30 lks.
Birch 6 S. 80 W. 19 lks.
Land level. Soil 3d rate.
Timber: Spruce, tam., birch, cedar & aspen.
Undergrowth, the same & fir.

East on a random line between sections 15 & 22.
Var. 9 degrees 30 minutes E.
25.00 Stream 25 lks. runs south.
40.00 Set temp. ¼ sec. cor.
79.76 Intersect N. & S. line 48 lks. south of cor. to sects. 14, 15, 22 & 23 from which corner I run
S. 89 degrees 39 minutes west on a true line between sections 15 & 22.
39.88 Set a post for ¼ sec. cor. from which
Fir 5 S. 20 W. 10 lks.
Fir 3 N. 38 W. 15 lks.
79.76 The corner to sections 15, 16, 21 & 22.
Land rolling. Soil 3d rate.
Timber: Birch, tam., spruce, aspen & cedar, mostly fire killed.
Undergrowth, the same & fir.

North between sections 15 & 16.
Var. 9 degrees 40 minutes E.

40.00 Set a post for ¼ sec. cor. from which
Birch 18 N. 70 E. 102 lks.
Birch 5 N. 38 W. 115 lks.
44.00 Enter swamp brs. N. E. & S. W.
80.00 Set a post for corner to sections 9, 10, 15 & 16 from which
Cedar 10 N. 60 E. 45 lks.
Cedar 6 N. 46 W. 34 lks.
Tam. 8 S. 35 W. 12 lks.
41 Tam. 6 S. 75 E. 40 lks.
Land slightly rolling. Soil 3d rate.
Timber: Birch, tamarac-, spruce, cedar, aspen & maple.
Undergrowth, aspen, fir & alder.

JUNE 23D, 1876.

East on random line between sections 10 & 15.
Var. 9 degrees 40 minutes E.

40.00 Set temp. ¼ sec. cor.
62.00 Leave swamp brs. N. E. & S. W.
72.00 Stream 25 lks. runs S. W.
80.10 Intersect N. & S. line 20 lks. south of corner to sections 10, 11, 14 & 15 from which corner I run
S. 89 degrees 51 minutes W. on a true line between sections 10 & 15
40.05 Set a post for ¼ sec. cor. from which
Tam. 3 S. 31 W. 10 lks.
Tam. 5 N. 80 W. 15 lks.
80.10 The corner to sections 9, 10, 15 & 16.
Land level. Soil 3d rate.
Timber: Spruce, tamarac-, cedar & birch.
Undergrowth, the same, aspen & fir.

North between sections 9 & 10.
Var. 9 degrees 35 minutes E.

15.00 Leave swamp brs. E. & W.
40.00 Set a post for ¼ sec. cor. from which
Cedar 10 N. 80 W. 50 lks.
Tam. 12 N. 35 E. 42 lks.
46.40 Set a post on south shore of Cedar Island lake for corner to fractional sections 9 & 10 from which
Cedar 5 S. 50 E. 26 lks.
Birch 8 S. 42 W. 15 lks.
42 The point for corner to sections 3, 4, 9 & 10 falls in the lake and cannot be set.
Land rolling. Soil 3d rate.
Timber: Birch, tamarac-, spruce, cedar & Norway pine.
Undergrowth, the same & bl'k alder.

The point for corner to sections 3, 4, 9 & 10 being in the lake I begin at the corner to sections 3 & 4 on the north boundary of the township and run south on a true line between sections 3 & 4.

Var. 9 degrees 30 minutes E.

26.10 Set a post on north shore of lake for corner to fractional sects. 3 & 4 from which
Birch 6 N. 54 E. 25 lks.
Birch 10 N. 60 W. 18 lks.
From this point the flag in line between sections 8 & 9 on south shore of lake bears S. 0 degrees 15 minutes E.
To ascertain the distance across the lake on this line I run a base N. 82 E. 15.00 chains to a point from which the flag in line on south shore bears S. 9 degrees 10 minutes, west I find the distance across the lake to be 87.60 chains.
Land rolling. Soil 3d rate.
Timber· Birch, spruce, tam., aspen, cedar, maple & pine.
Undergrowth, the same.

North between sections 32 & 33.

Var. 10 degrees E.

40.00 Set post for ¼ sec. cor. from which
Spruce 4 N. 10 E. 16 lks.
Spruce 3 N. 64 W. 18 lks.

43

80.00 Set a post for corner to sections 28, 29, 32 & 33 from which
Cedar 5 N. 60 E. 23 lks.
Tam. 3 N. 32 W. 19 lks.
Tam. 3 S. 58 W. 10 lks.
Spruce 5 S. 23 E. 14 lks.
Land level. Soil 3d rate.
Timber: Spruce, tam. & cedar.
Undergrowth, the same.

East on a random line between sections 28 & 33.

Var. 10 degrees E.

40.00 Set temp. ¼ sec. cor.
79.82 Intersect N. & S. line 72 lks. N. of cor. to sections 27, 28, 33 & 34 from which corner I run
N. 89 degrees 29 minutes W. on a true line between sections 28 & 33.
39.91 Set a post for ¼ sec. cor. from which
Tam. 4 N. 50 E. 26 lks.
Tam. 3 S. 46 E. 19 lks.
79.82 The corner to sections 28, 29, 32 & 33.
Land level & wet. Soil 3d rate.
Timber: Small spruce, tamarac- & cedar.
Undergrowth the same.

North between sections 28 & 29.
Var. 9 degrees 50 minutes E.

5.00 Leave swamp brs. E. & W.
25.00 Stream 25 lks. runs S. W.
39.00 Enter swamp brs. E. & W.
40.00 Set post for ¼ sec. cor. from which
Cedar 4 N. 55 W. 11 lks.
Spruce 4 M. 80 E. 9 lks.

44

80.00 Set a post for cor. to sections 20, 21, 28 & 29 from which
Spruce 8 N. 25 E. 18 lks.
Spruce 4 N. 85 W. 10 lks.
Spruce 4 S. 60 W. 14 lks.
Tam. 3 S. 46 E. 17 lks.
Land level & wet. Soil 3d rate.
Timber: Spruce, tamarac- & cedar.
Undergrowth, the same.

JUNE 24, 1876.

East on a random line between sections 21 & 28.
Var. 9 degrees 50 minutes E.

40.00 Set temp. ¼ sec. cor.
72.40 Leave swamp brs. N. E. & S. W.
79.90 Intersect N. & S. line 43 lks. N. of cor. to sects. 21, 22, 27 & 28 from corner I run
N. 89 degrees 42 minutes west on a true line between sections 21 & 28.
39.95 Set a post for ¼ sec. cor. from which
Tam. 3 N. 80 E. 5 lks.
Tam. 4 S. 55 W. 6 lks.
79.90 The corner to sections 20, 21, 28 & 29.
Land level & wet. Soil 3d rate.
Timber: Spruce, tamarac- & cedar.
Undergrowth, the same.

North between sections 20 & 21.
Var. 9 degrees 45 minutes E.

12.50 Creek 5 lks. runs south west.
40.00 Set a post for ¼ sec. cor. from which
Tam. 5 N. 18 E. 42 lks.
Tam. 5 N. 45 W. 36 lks.
68.60 Creek 6 lks. runs S. west.

45

80.00 Set post for cor. to sects. 16, 17, 20 & 21 from which
Cedar 6 N. 43 E. 21 lks.
Cedar 5 N. 60 W. 23 lks.
Spruce 5 S. 65 W. 33 lks.
Spruce 3 S. 20 E. 40 lks.

Land level. Soil 3d rate.
Timber: Tamarac-, spruce & cedar.
Undergrowth the same.

East on a random line between sections 16 & 21.
Var. 9 degrees 40 minutes E.

10.00 Creek 5 lks. runs S. west.
40.00 *Set temp. ¼ sec. cor.*
74.50 Leave swamp brs. N. & S.
80.32 Intersect N. & S. line at the corner to sections 15, 16, 21 & 22.
from which corner I run
West on a true line between sections 16 & 21
40.16 Set a post for ¼ sec. cor. from which
Tam. 8 N. 29 W. 38 lks.
Tam. 5 S. 60 E. 48 lks.
80.32 The corner to sections 16, 17, 20 & 21.
Land level. Soil 3d rate.
Timber: Tamarac-, spruce & cedar.
Undergrowth, the same.

North between sections 16 & 17.
Var. 9 degrees 40 minutes E.

40.00 Set a post for ¼ sec. cor. from which
Spruce 4 N. 25 W. 8 lks.
Tam. 3 S. 70 E. 16 lks.
80.00 Set a post for cor. to sects. 8, 9, 16 & 17 from which
Cedar 10 N. 45 E. 50 lks.
46 Cedar 4 N. 56 W. 38 lks.
Cedar 6 S. 70 W. 45 lks.
Tam. 10 S. 12 E. 34 lks.
Land level & wet. Soil 3d rate.
Timber: Spruce, tamarac- & cedar.
Undergrowth the same.

East on a random line between sects. 9 & 16.
Var. 9 degrees 35 minutes E.

40.00 Set temp. ¼ sec. cor.
80.28 Intersect N. & S. line 48 lks. South of corner to sections 9, 10, 15 & 16 from which corner I run
S. 89 degrees 39 minutes W. on a true line between sections 9 & 16.
40.14 Set a post for ¼ sec. cor. from which
Cedar 5 N. 40 E. 15 lks.
Tam. 4 S. 80 E. 12 lks.
80.28 The corner to sections 8, 9, 16 & 17.
Land level & wet. Soil 3d rate.
Timber: Tamarac-, cedar & spruce.
Undergrowth the same.

North between sections 8 & 9.
Var. 9 degrees 40 minutes E.

25.00 Leave swamp bears N. E. & S. W.
32.50 Creek 6 lks. runs east.
40.00 Set post for ¼ sect. cor. from which
Birch 10 N. 27 W. 35 lks.
Birch 14 N. 50 E. 26 lks.
80.00 Set a post for corner to sections 4, 5, 8 & 9 from which
Fir 6 N. 64 E. 18 lks.
Fir 4 N. 50 W. 26 lks.
Cedar 5 S. 41 W. 15 lks.
47 Birch 10 S. 20 E. 20 lks.
Land rolling. Soil 3d rate.
Timber: Birch, spruce, cedar, tamarac-, aspen & maple.
Undergrowth, aspen & fir.

The line between sections 4 & 9 runs into "Cedar Island lake" in less than 80.00 chains, I therefore run it
East on a true line between sections 4 & 9.
Var. 9 degrees 35 minutes E.

12.10 Set a post on the west shore of Cedar Island lake for
Corner to fractional sections 4 & 9 from which
Fir 4 N. 65 W. 34 lks.
Birch 6 S. 26 W. 44 lks.
Land rolling. Soil 3d rate.
Timber: Birch, cedar, spruce, aspen, tamarac- & maple.
Undergrowth, fir & aspen.

North on a random line between sections 4 & 5.
Var. 9 degrees 35 minutes E.

6.40 Creek 10 lks. runs east.
40.00 Set temp. ¼ sec. cor.
80.24 Intersect north boundary 35 lks. east from the cor. to sections 4 & 5 from which corner I run
S. 0 degrees 15 minutes E. on a true line between sections 4 & 5.
40.24 Set a post for ¼ sect. cor. from which
Birch 14 N. 80 W. 42 lks.
Aspen 10 N. 30 E. 56 lks.
80.24 The corner to sections 4, 5, 8 & 9.
Land rolling. Soil 3d rate.
48 Timber: Birch, spruce, cedar, aspen, tamarac-, & maple.
Undergrowth, fir, aspen & alder.

JUNE 26, 1876.

Field notes of the meanders of "Cedar Island lake."

Begin at the corner to fractional sections 3 & 34, in the north boundary of the township, and run thence in sec. 3, as follows:
S. 38¼ W. 23.00 chains thence
S. 63 W. 13.00 chains thence
S. 82 W. 15.00 chains to the corner to fractional sec. 3 & 4, thence in fractional sec. 4, as follows:
S. 86 W. 10.00 chains, thence
S. 61½ W. 17.00 chains, thence
S. 71½ W. 3.20 chains, thence
N. 67½ W. 21.00 chains, thence
N. 10 W. 4.00 chains, thence
N. 73½ W. 7.50 chains, thence
S. 43½ W. 10.00 chains, thence
S. 25 W. 12.00 chains, thence
S. 13 E. 18.00 chains, thence
S. 21½ W. 17.50 chains
Creek 10 lks. runs E. into lake.
S. 10½ E. 6.10 chains to the corner to fractional sec. 4 & 9.
Thence in sec. 9 as follows:
S. 10½ E. 7.50 chains, thence
S. 35 E. 25.00 chains, thence
Creek 6 lks. runs N. E. into lake.
S. 67 E. 20.00 chains, thence
S. 72 E. 15.00 chains, thence
49 N. 84½ E. 8.00 chains, thence
N. 64½ E. 13.45 chains to the corner to fractional sec. 9 & 10.
Thence in sec. 10, as follows:
N. 59 E. 20.00 chains, thence
N. 42 E. 27.00 chains, thence
N. 75 E. 9.00 chains, thence
S. 47 E. 6.20 chains, thence
S. 19¼ E. 8.80 chains, thence
S. 49 E. 12.00 chains, thence
S. 68½ E. 12.00 chains, thence
N. 88 E. 8.70 chains, to the corner to fractional sections 10 & 11.
Thence in sec. 11, as follows:
N. 88 E. 6.25 chains, thence
S. 60½ E. 2.50 chains, thence
South 4.00 chains, thence
S. 48 E. 2.00 chains, thence
Stream 25 lks. runs south out of lake.
N. 58½ E. 5.00 chains, thence
N. 25 E. 10.00 chains, thence
N. 44¾ E. 5.00 chains, thence
N. 55 E. 27.60 chains, to the corner to fractional sec. 2 & 11.

Thence in sec. 2, as follows:
N. 44½ E. 5.00 chains, thence
N. 22 E. 13.00 chains, thence
N. 45 E. 12.00 chains, thence
N. 56½ E. 10.00 chains, thence
N. 38 E. 6.00 chains, thence
N. 7½ W. 7.00 chains, thence
N. 4¾ E. 17.00 chains, thence
N. 13 W. 5.00 chains, thence
50 N. 22¼ W. 8.00 chains, thence
N. 58 W. 13.00 chains, thence
S. 87¼ W. 10.00 chains, thence
S. 41 W. 15.00 chains, thence
S. 66½ W. 3.60 chains, thence
N. 75 W. 2.50 chains, thence
N. 52 W. 5.00 chains, thence
N. 19¼ E. 5.00 chains, thence
N. 35¼ W. 3.80 chains, thence
N. 78½ W. 5.50 chains, thence
N. 23 W. 3.20 chains, to the corner to fractional sec. 2 & 35 in the northern boundary of the township.
Land slightly rolling. Soil 3d rate. Timber, spruce, tam., birch, cedar, aspen, maple & pine.

JUNE 27TH, 1876.

North between sections 31 & 32.
Var. 9 degrees 30 minutes E.
40.00 Set a post for ¼ sec. cor. from which
Birch 6 N. 30 W. 10 lks.
Fir 4 N. 15 E. 20 lks.
Stream 25 lks. runs west.
57.00 Set a post for corner to sections 29, 30, 31 & 32, from
80.00 which
Aspen 3 N. 40 E. 12 lks.
Aspen 3 N. 70 W. 8 lks.
Aspen 4 S. 40 W. 16 lks.
Aspen 4 S. 10 E. 10 lks.
Land slightly rolling. Soil 3d rate.
Timber: Birch, tam., spruce, cedar, aspen & maple mostly killed by fire. Undergrowth, aspen, fir & alder.

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51 East on a random line between sections 29 & 32.
Var. 9 degrees 35 minutes E.
27.50 Stream 25 lks. runs S. west.
40.00 Set temp. ¼ sec. cor.
52.50 Enter swamp brs. N. E. & S. W.
79.75 Intersect N. & S. line 33 lks. south of the corner to sects. 28, 29, 32 & 33.
from which corner I run

S. 89 degrees 46 minutes west on a true line between sections 29 & 32.

39.88 Set a post for ¼ sec. cor. from which
Fir 4 N. 28 W. 30 lks.
Spruce 5 S. 60 W. 18 lks.

79.76 The corner to sections 29, 30, 31 & 32.
Land level. Soil 3d rate.
Timber: Birch, spruce, tamarac-, aspen & maple, mostly burned.
Undergrowth the same & fir.

West on a random line between sections 30 & 31.
Var. 9 degrees 10 minutes E.

27.00 Enter swamp brs. N. E. & S. W.
40.00 Set temp. ¼ sec. cor.
80.46 Intersect west boundary 52 lks. south of cor. to sects. 30 & 31, from which corner I run S. 89 degrees 38 minutes E. on a true line between secs. 30 & 31.
40.46 Set post for ¼ sec. cor. from which
Cedar 12 S. 70 E. 25 lks.
Cedar 8 N. 15 W. 10 lks.
80.46 The corner to sections 29, 30, 31 & 32.
Land level. Soil 3d rate.
Timber: Spruce, birch, tam., aspen & cedar.
Undergrowth the same & fir.

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52 North between sections 29 & 30.
Var. 9 degrees 20 minutes E.

22.50 Enter swamp brs. N. E. & S. W.
40.00 Set a post for ¼ sec. cor. from which
Tam. 10 N. 56 E. 11 lks.
Tam. 4 N. 80 W. 14 lks.
80.00 Set a post for corner to sections 19, 20, 29 & 30 from which
Cedar 4 N. 80 W. 25 lks.
Tam. 5 N. 42 E. 17 lks.
Tam. 8 S. 58 E. 25 lks.
Tam. 3 S. 71 W. 35 lks.
Land level. Soil 3d rate.
Timber: Tamarac-, spruce, cedar & birch.
Undergrowth, the same & fir.

East on a random line between sections 20 & 29.
Var. 9 degrees 20 minutes E.

40.00 Set temp. ¼ sec. cor.
62.00 Creek 5 lks. runs south.
80.25 Intersect N. & S. line 68 lks. N. of cor. to sects. 20, 21, 28 & 29
From which corner I run

N. 89 degrees 31 minutes west on a true line between sections 20 & 29.

40.12 Set a post for ¼ sec. cor. from which
Tam. 5 N. 75 E. 80 lks.
Tam. 4 S. 42 W. 11 lks.

80.25 The corner to sections 19, 20, 29 & 30.
Land level. Soil 3d rate.
Timber: Tamarac-, spruce & cedar.
Undergrowth the same.

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53 West on a random line between sections 19 & 30.
Var. 9 degrees E.

40.00 Set temp. ¼ sec. cor.
45.00 Creek 10 lks. runs south.
80.45 Intersect W. boundary 37 lks. north of cor. to sections 19 & 30
From which corner I run
N. 89 degrees 44 minutes E. on a true line between sections 19 & 30.
40.45 Set post for ¼ sec. cor. from which
Spruce 10 N. 21 E. 34 lks.
Birch 4 S. 35 W. 50 lks.
80.45 The corner to sections 19, 20, 29 & 30.
Land level. Soil 3d rate.
Timber: Tam., spruce, cedar & birch. Undergrowth the same.

JUNE 28, 1876.

North between sections 19 & 20.
Var. 9 degrees 20 minutes E.

40.00 Set a post for ¼ sec. cor. from which
Spruce 8 N. 34 W. 40 lks.
Cedar 8 N. 65 E. 27 lks.
53.00 Creek 10 lks. runs S. west.
80.00 Set a post for cor. to sections 17, 18, 19 & 20 from which
Tam. 10 N. 51 E. 30 lks.
Tam. 12 N. 80 W. 46 lks.
Spruce 8 S. 10 W. 35 lks.
Tam. 14 S. 36 E. 60 lks.
Land level. Soil 3d rate.
Timber: Spruce, tamarac- & cedar.
Undergrowth, the same.

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54 East on a random line between sections 17 & 20.
Var. 9 degrees E.

40.00 Set a post for temp. ¼ sec. cor.
79.86 Intersect N. & S. line 52 lks. N. of corner to sects. 16, 17, 20 & 21
From which corner I run

N. 89 degrees 38 minutes west on a true line between sections 17 & 20.

39.93 Set post for ¼ sec. cor. from which
Spruce 4 S. 20 E. 65 lks.
Spruce 6 N. 58 W. 40 lks.

79.86 The corner to sections 17, 18, 19 & 20.
Land level. Soil 3d rate.
Timber: Spruce, tamarac- & cedar.
Undergrowth the same.

West on a random line between sections 18 & 19.
Var. 9 degrees E.

40.00 Set temp. ¼ sec. cor.
70.00 Leave swamp brs. N. W. & S. E.
80.30 Intersect W. boundary 67 lks. S. of cor. to sects. 18 & 19.
From which corner I run
S. 89 degrees 31 minutes E. on a true line between sects. 18 & 19.
40.30 Set a post for ¼ sec. cor. from which
Cedar 10 N. 50 W. 41 lks.
Cedar 4 S. 62 E. 60 lks.
80.30 The corner to sections 17, 18, 19 & 20.
Land level. Soil 3d rate.
Timber: Spruce, tamarac-, cedar & birch.
Undergrowth the same & alder.

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55 North between sections 17 & 18.
Var. 9 degrees 20 minutes E.

27.50 Creek 6 lks. runs S. west.
40.00 Set a post for ¼ sec. cor. from which
Tam. 4 N. 12 E. 18 lks.
Tam. 3 N. 42 W. 16 lks.
80.00 Set a post for cor. to sects. 7, 8, 17 & 18 from which
Spruce 5 N. 50 E. 27 lks.
Spruce 6 N. 85 W. 14 lks.
Tam. 10 S. 38 W. 9 lks.
Cedar 10 S. 60 E. 15 lks.
Land level & wet. Soil 3d rate.
Timber: Spruce, tamarac- & cedar.
Undergrowth the same.

East on a random line between sects. 8 & 17.
Var. 9 degrees E.

20.00 Creek 4 lks. runs south.
40.00 Set temp. ¼ sec. cor.
41.00 Leave swamp brs. N. W. & S. E.
61.20 Enter swamp brs. N. E. & S. W.
80.30 Intersect N. & S. line 60 lks. south of cor. to sects. 8, 9, 16 & 17.

From which corner I run
S. 89 degrees 34 minutes west on a true line between sects. 8 & 17.
40.15 Set a post for ¼ sec. cor. from which
Tam. 8 N. 20 W. 35 lks.
Spruce 6 S. 78 W. 45 lks.
80.30 Corner to sections 7, 8, 17 & 18.
Land level. Soil 3d rate.
Timber: Spruce, tam., cedar, birch & aspen.
Undergrowth the same.

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56 West on a random line between sects. 7 & 18.
Var. 9 degrees E.
40.00 Set temp. ¼ sec. cor.
50.50 Leave swamp brs. N. E. & S. W.
79.60 Intersect W. boundary 30 lks. N. of cor. to sects. 7 & 18.
From which corner I run
N. 89 degrees 47 minutes E. on a true line between sects. 7 & 18.
39.60 Set a post for ¼ sec. cor. from which
Cedar 6 N. 28 E. 14 lks.
Cedar 10 S. 58 W. 19 lks.
79.60 The corner to sections 7, 8, 17 & 18.
Land level. Soil 3d rate.
Timber: Spruce, tam., cedar, birch & aspen.
Undergrowth the same & alder.

North between sections 7 & 8.
Var. 9 degrees 20 minutes E.
40.00 Set a post for ¼ sec. cor. from which
Tam. 3 N. 73 W. 18 lks.
Spruce 3 N. 22 E. 25 lks.
41.30 Leave swamp brs. E. & W.
60.00 Creek 6 lks. runs S. east.
80.00 Set a post for cor. to sections 5, 6, 7 & 8 from which
Aspen 10 N. 65 E. 37 lks.
Aspen 6 N. 40 W. 48 lks.
Aspen 7 S. 43 W. 45 lks.
Aspen 4 S. 70 E. 10 lks.
Land slightly rolling. Soil 3d rate.
Timber: Birch, spruce, tam., cedar & aspen.
Undergrowth the same & fir.
JUNE 29, 1876.

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57 East on a random line between sects. 5 & 8.
Var. 9 degrees 20 minutes E.
40.00 Set temp. ¼ sec. cor.
80.32 Intersect N. & S. line 38 lks. S. of cor. to sects. 4, 5, 8 & 9.
From which corner I run

S. 89 degrees 44 minutes W. on a true line between sects. 5 & 8.

40.16 Set a post for ¼ sec. cor. from which
Birch 7 N. 63 W. 36 lks.
Fir 5 S. 25 E. 19 lks.

80.32 The corner to sections 5, 6, 7 & 8.
Land rolling. Soil 3d rate.
Timber: Birch, cedar, spruce, aspen, tam., & maple.
Undergrowth aspen, fir & alder.

West on a random line between sections 6 & 7.
Var. 9 degrees 15 minutes E.

40.00 Set temp. ¼ sec. cor.

79.65 Intersect W. boundary line 46 lks. N. of cor. to sects. 6 & 7
From which corner I run N. 89 degrees 40 minutes E. on a true line between sects. 6 & 7.

39.65 Set a post for ¼ sec. cor. from which
Cedar 18 S. 80 W. 20 lks.
Birch 12 N. 32 W. 34 lks.

79.65 The corner to sections 5, 6, 7 & 8.
Land rolling. Soil 3d rate.
Timber: Birch, aspen, cedar, spruce & maple.
Undergrowth, aspen, fir & alder.

North on a random line between sections 5 & 6.
Var. 9 degrees 30 minutes E.

58

40.00 Set temp. ¼ sec. cor.

80.33 Intersect N. boundary line 27 lks. west of cor. to sects. 5 & 6.
From which corner 1 run
S. 0 degrees 12 minutes W. on a true line between sections 5 & 6.

40.33 Set a post for ¼ sect. cor. from which
Birch 14 S. 60 E. 21 lks.
Birch 10 N. 72 W. 26 lks.

80.33 The corner to sections 5, 6, 7 & 8.
Land rolling. Soil 3d rate.
Timber: Birch, spruce, cedar, aspen & maple.
Undergrowth the same, fir & alder.

Field notes of the meanders of a lake in section 18.

Beginning at the corner to fractional sects. 13 & 18 on the north shore of the lake, and run thence in sec. 18, as follows:

N. 72 E. 4.00 chains.
N. 15 E. 9.00 chains.
N. 42½ E. 8.00 chains.

S. 81½ E. 10.00 chains.
S. 52½ E. 8.00 chains.
S. 19½ E. 16.00 chains.
S. 9 W. 8.00 chains. A creek 8 lks. runs N. W. into lake.
S. 44 W. 2.00 chains.
S. 73½ W. 6.00 chains.
S. 63 W. 15.00 chains.
S. 69 W. 5.00 chains.
S. 77 W. 7.40 chains to the corner to fractional 13 & 18 on south shore of the lake.
The land about this lake is generally low and wet.
3rd rate.
59 Timber: Spruce, tamarac-, cedar, birch & pine.

JUNE 30TH, 1876.

General Description.

There is no land in this township above 3d rate quality, and a very large portion of the whole is swamp land and very wet. The timber is spruce, tamarac-, birch, cedar, aspen & maple, with scattering pine about the lake in the northern portion. Nearly all the timber, except that in the northern tier sections, has been killed by fire, and much of it has fallen. On all the high land there is a dense growth of aspen, fir and Norway pine, from 6 to 20 feet high.

List of Names.

A list of the names of the individuals employed to assist in running, measuring- or marking the lines and corners described in the foregoing field notes, of township No. 57 north of the base line of range No. 17 west of the 4th principal meridian, showing the respective capacities in which they acted.

Frank D. Howe, chainman.
B. Martin, chainman.
Orrin N. Parker, axman.

We hereby certify that we assisted Henry S. Howe, deputy surveyor, in surveying the sub-division & meander lines of township 57, north of the base line, of range No. 17, west of the 4th principal meridian, and that said township has been in all respects, to
60 the best of our knowledge and belief, well and faithfully surveyed, and the boundary monument planted, according to the instructions furnished by the surveyor general.

FRANK D. HOWE, *Chainman.*
B. MARTIN, *Chainman.*
ORRIS N. PARKER, *Axman.*

Subscribed and sworn to by the above named persons, before me, a notary public, for Ramsey county, in the State of Minnesota, this 1st day of July, 1876.

HENRY S. HOWE,
Notary Public, Minn.

[NOTARIAL SEAL.]

I, Henry S. Howe, deputy surveyor, do solemnly swear that in pursuance of a contract with James H. Baker, surveyor of the public lands of the United States, in the State of Minnesota, bearing date the 26th day of April, 1876, and in strict conformity to the laws of the United States, and the instructions furnished by the said surveyor general, I have faithfully surveyed the sub-division line and meanders of township No. 57, north of base line, of range No. 17, west of the 4 principal meredian, in the State aforesaid, and do further solemnly swear that the foregoing are the true and original field notes of such survey.

HENRY S. HOWE,
Deputy Surveyor.

61 Subscribed by said Henry S. Howe, deputy surveyor, and sworn to before me, a notary public, for Blue Earth county, in the State of Minnesota, this 25th day of July, 1876.

ROB'T H. ROSE,
Notary Public, Minn.

[NOTARIAL SEAL.]

SURVEYOR GENERAL'S OFFICE,
ST. PAUL, *Aug.* 19, 1876.

The foregoing field notes of the survey of the sub-division and meander lines of township No. 57, N. range, No. 17 W. 4th prin. mer. executed by Henry S. Howe, under his contract, dated April 26, 1876, in the month of June, 1876, having been critically examined, the necessary corrections and explanations made, the said field notes & the surveys they describe are hereby approved.

J. H. BAKER,
Surveyor General.

I, P. H. Kirwan, U. S. surveyor general, of Minnesota, do hereby certify that I have carefully compared the foregoing copy of the field notes of the survey of township 57, north, range 17 west, 4th meridian, Minnesota, executed by Henry S. Howe, deputy surveyor, with the original field notes of said survey, on file in this office, and that the same is a true and correct copy of, and transcript from said original field notes.

Surveyor general's office, St. Paul, Minn., January 16, 1896.

(Signed) P. H. KIRWAN,
Surveyor General.

62 EXHIBIT D.

E.
J. H. B.
M. L. 115675.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *March* 2, 1901.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of letter dated April 18, 1879, from the U. S. surveyor general of Minnesota, addressed to the Commissioner of the General Land Office; copy of letter from the U. S. surveyor general of Minnesota, dated June 2, 1879, addressed to the Commissioner of the General Office and copies of papers inclosed therewith, viz: affidavit of John McGuire, sworn to May 1, 1879, and letters dated May 5, 1879, and May 31, 1879, from the receiver of the U. S. land office at Duluth, Minnesota, addressed to the U. S. surveyor general at St. Paul, Minnesota, relative to the survey of T. 57 N. R. 17 W., Minnesota; also copy of letter dated June 11, 1879, from the Commissioner of the General Land Office addressed to the U. S. surveyor general of Minnesota, are true and literal exemplifications of the originals of said letters from the U. S. surveyor general and of the inclosures received with his letter of June 2, 1879, and of the official record of said letter from the Commissioner of the General Land Office in this office.

In testimony whereof, I have hereunto subscribed my name
63 and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Signed) BINGER HERMANN,
Commissioner of the General Land Office.

[Seal of United States General Land Office.]

(Internal Rev. stamp canceled.)

EXHIBIT D—Continued.

UNITED STATES SURVEYOR GENERAL'S OFFICE,
ST. PAUL, MINN., *April 18th*, 1879.

Hon. J. A. Williamson, Com'r Gen'l Land Office, Washington. D. C.

SIR: I have the honor to state that I am informed by the register of the local land office at Duluth that complaints have been made by explorers and others, that the surveys executed by H. S. and F. D. Howe in former years, were very imperfectly made, and that in some cases, no lines or corners can be found.

Affidavits of the facts in the case, will very soon be procured, and when received will be forwarded to you, for your action, in the mat-

ter. In the meantime, I would suggest that approval of their surveying accounts recently forwarded to you be suspended.

Very respectfully, J. H. STEWART,
Surveyor General.

64 EXHIBIT D—Continued.

UNITED STATES SURVEYOR GENERAL'S OFFICE,
ST. PAUL, MINN., *June 2d*, 1879.

Hon. J. A. Williamson, Com'r Gen'l Land Office, Washington, D. C.

SIR: I have the honor to transmit herewith an affidavit made by John McGuire in relation to the survey of township No. 57, north of range No. 17 W. made by Henry S. Howe in 1876, and also two letters from Mr. T. H. Pressnell, receiver of U. S. land office at Duluth, relative to statements made by L. B. Johnson, relative to said survey. From the letter of Mr. Pressnell dated May 31st, it appears that there is great doubt as to the correctness of the statements set forth in Mr. McGuire's affidavit and that they may have been entirely mistaken as to the locality in which their explorations were made.

I would therefore interpose no further objections to the payment of the account of Messrs. H. S. and F. D. Howe, for the sum of $1057.96–100 which was sent you by my predecessor on the 12th of April last.

I deem it, however, desirable that an examination should be made, of the Messrs. Howes, surveys not only in said tp. 57, R. 17, but also of their surveys recently made, under contract dated July 25, 1878, and would respectfully request authority to employ
65 a competent surveyor to make such examination.

Very respectfully, J. H. STEWART,
Surveyor General.

EXHIBIT D—Continued.

Personally appeared before me T. H. Pressnell, receiver of public moneys, at Duluth, Minnesota, John McGuire, who, being duly sworn deposes and says that he is familiar with township No. 57 N. of range 17 W. in St. Louis county, Minnesota, that during the month of May, 1878, he in company with L. B. Johnson, visited said township for the purpose of exploring it for pine lands; that they traversed the entire west half of the said township, starting in at the south-west corner therefor going up the west line until they reached a certain lake situated in sec. 18 of said township and sec. 13–57–18; from thence they traveled north-east through sections 18 and 17; thence north-west through what they supposed to be sec. 8, and part of sec. 6, thence they went east until they reached a lake which from the Government plat on file in the U. S. land office, at Duluth, Minn., appears to be located in sections 2, 3, 4, 9, 10 and 11 of said

township 57 N. of R. 17 W.; thence they followed the lake around its west and south boundaries in search of meander corners, none of which they were able to find; that they searched for a stream which the aforesaid plat shows to leave the lake in lot 3, sec. 11, it being their purpose to follow said stream down through the said town and to its junc-
66 tion with the St. Louis river in the south-east corner of township 57, north of R. 18 W., but they found no such outlet, from the said lake; that they did find an outlet from said lake in what they supposed to be section 9; and that the said stream flowed into a lake situated in what they considered was secs. 9, 10, 15 & 16, that it left said last mentioned lake (which they calculated was about half a mile in width) at a point in what they supposed was sec. 16, and flowed westerly into another lake, situated, as they calculated, in secs. 17 and 18, the dimensions of which are about one and one-half miles; and from thence it flowed into the lake above described as located in sects. 18–57–17 and sec. 13–57–18; that they could find no such stream as the one represented on the plat of said towp. 57–17 as running diagonally through said townp. from sec. 11 through secs. 15, 22, 28 and 31; that they were unable to find any section corners or quarter posts in the said west half of said township, nor any meander posts around any of the above described lakes; and there actually exists no such swamp as is represented by said plat in secs. 10, 15, 16, 17, 18, 19, 20, 21, 28, 29 and 30 but that the said sections are composed of hard land upon which there is a scattering growth of Norway pine and other timber, with the exception of sec. 30 and a part of sec. 19 which is swamp; that the lake is represented by said plat to be located in secs. 2, 3, 4, 9, 10 & 11 is not near as large as is represented by said plat.

Deponent further deposing says that both himself and Mr. John-
67 son are woodsmen and explorers by occupation, and that they have operated in this section of country during the past five years, and that they are familiar with the methods of finding and tracing lines of survey; and that if the said township 57–17 had been surveyed as is represented by the above described plat they could have found the lines without difficulty.

Dated, Duluth, Minn., May 1, 1879.

JOHN McGUIRE.

Sworn to and subscribed before me this 1st day of May, A. D. 1879.

T. H. PRESSNELL, *Receiver.*

EXHIBIT D—Continued.

R. C. Mitchell, register. T. H. Pressnell, receiver.

UNITED STATES LAND OFFICE,
DULUTH, MINN., *May* 5, 1879.

Hon. J. H. Stewart, surveyor gen'l, St. Paul.

SIR: Referring to your letter of April 21, 1879, requesting certain affidavits, I herewith enclose an affidavit of John McGuire, Esq., and

have to say that Mr. L. B. Johnson, to whom reference is made in said affidavit and who some time since informed me that he would make an affidavit of similar purport, when called upon to do so,—
68 is at present exploring the towns surveyed by Mr. Howe last summer and will not return until about two weeks hence. When he arrives, I will take his affidavit and forward it to you.

Very respectfully, your ob't serv't,

T. H. PRESSNELL.

EXHIBIT D—Continued.

R. C. Mitchell, register. T. H. Pressnell, receiver.

UNITED STATES LAND OFFICE,
DULUTH, MINN, *May* 31, 1879.

Hon. J. H. Stewart, sur. gen'l of Minnesota, St. Paul, Minn.

SIR: Referring to my letter of May 5th, with which I transmitted the affidavit of John McGuire, relative to manner in which tp. No. 57 N. of R. No. 17 W., was surveyed, I have now to say that the Mr. L. B. Johnson, therein named has just returned from an extended exploring trip on the headwaters of the St. Louis river, and says that among the other towns he passed through was 57–17, and that as a result he finds the survey of said town much better than supposed it was on the first occasion, and that this time he had no difficulty in tracing the lines in the north half of the township, but that he did not go over the south half of the town this trip. He also says that had he been here when Mr. McGuire made the affidavit that he (Johnson) would have also signed it, but he now
69 knows that when Mr. McGuire and he were there that they were not in the portion of the township which they supposed they were, and consequently declines to make an affidavit of same purport as that of Mr. McGuire's.

Very respectfully, your ob't serv't,

T. H. PRESSNELL, *Receiver.*

EXHIBIT D—Concluded.

J. W. D.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *June* 11, 1879.

J. H. Stewart, Esq., U. S. surveyor general, St. Paul, Minn.

SIR: The surveying account of H. E. and F. D. Howe, amounting to the sum of $1057.96–100, received with your predecessor's letter of April 12, 1879, is transmitted to the Treasury for payment on this day, with request that draft be sent to payees as directed.

Referring to your letter of the 2d inst., inclosing affidavits of John

McGuire and letters of Mr. T. H. Pressnell, receiver of U. S. land office at Duluth, Minn., in relation to alleged irregular surveys by Messrs. H. S. and F. D. Howe and requesting that you may be authorized to employ a competent surveyor to make exam-
70 inations of their surveys, I have to state that the statements of Mr. McGuire having boen made from mere conjecture and afterwards found by Mr. L. B. Johnson to be incorrect, and the apportionment for examinations of surveys having been exhausted, I have to refuse your request.

Very respectfully, J. A. WILLIAMSON,
Commissioner.

DEFENDANT'S EXHIBIT 1.

"E."
M. L. 77858 J. S. W.
J. B. S.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *November* 20, 1895.

I, E. F. Best, acting Commissioner of the General Land Office, do hereby certify that the annexed copy of a letter from the Secretary of the Interior to the Commissioner of the General Land Office relative to the application of G. A. Burns, *et al.*, for the survey of certain unsurveyed land in secs. 2, 3, 4, 9, 10 and 11, T. 57, N. R. 17 W., 4th P. M., Minnesota, is a true and literal exemplification of the original of said letter on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Signed) E. F. BEST,
71 *Acting Commissioner of the General Land Office.*

[Seal of United States Genral Land Office.]

EXHIBIT 1—Continued.

Vol. 20, No. 279.

E. F. B.
P. J. C.
F. L. C.
V. B.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *January* 18, 1895.

In re G. A. BURNS ET AL., Re-survey.

The Commissioner of the General Land Office.

SIR: This is an application by G. A. Burns and six others, who allege that they are actual settlers upon a tract of unsurveyed land belonging to the United States, and included in sections 2, 3, 4, 9, 10

and 11, in township 57, range 17 west, 4th P. M., Minnesota, which tract was either fraudulently or by error included in the meander of Cedar Island lake, called also Ely lake, located in said sections and represented in the official plat of such survey to be a part of said lake covered by its waters, and they request that the tract may be surveyed, that they may procure title thereto. It is also sug-
72 gested by counsel in their brief that a hearing be ordered for the purpose of determining the facts alleged.

Your office, by letter of October 6, 1893, denied the petition, whereupon the petitioners prosecute this appeal, assigning error as follows:—

1. In holding that the lands involved in this appeal have been conveyed by Government.

2. In holding that the rule announced in Mitchell *vs.* Smale, 140 U. S., 413, governs the decision in this case, as the lands here involved are no part of a former lake bed.

3. In denying the petition on the ground that no evidence was produced that the outlet of Cedar Island lake was not dammed at the time of the Government survey in 1876.

4. In holding that the application is one to place the petitioners in possession of lands *outside* of official meander lines of Cedar Island lake.

5. In holding that an order for a survey of the lands in question, or a hearing to establish the truth of the matters set up in the affidavits, would be a cause of vexatious litigation which ought not be created or sanctioned.

6. In disallowing any relief to the petitioners under their application.

7. In denying petitioners such relief under their application as will give them a standing in court to determine adverse claims, if any, to the lands in question.

8. If the order appealed from be a discretionary order, the Commissioner erred in disallowing the application, because such disallowance was an abuse of discretion.

73 The survey of this township was made by H. E. Howe, United States deputy surveyor, in 1876; approved by the surveyor general August 7, 1876.

A similar application was made by the same parties through the surveyor general of Minnesota in May, 1892; that was also rejected by your office letter of October 7, 1892.

The surveyor general in transmitting this petition, says:—

"A great deal of complaint has come to this office in regard to the survey of this town, especially this portion of it, and I find by referring to the files of the office, it is no new matter.

The plat was transmitted to your office April 12, 1879, by Hon. J. H. Baker. On April 18, 1879, Hon. J. H. Stewart in a letter addressed to the Hon. Commissioner, asked that action be suspended in approving survey until affidavits could be forwarded.

On June 2, 1879, an affidavit of John McGuire and letters of F. H. Pressnell, receiver, were forwarded and in this letter Surveyor-Gen-

eral Stewart withdrew his objections to the approval of the survey, but requested that an examination of said survey be made. This request was denied by the Hon. Commissioner in his letter E to this office of June 11, 1879. I find no record in this office of the formal approval of this survey."

There are quite a number of affidavits presented by the petitioners outside of their own, some of them accompanied with plats of the land and lake, which were made by surveyors and engineers,
74 woodsmen and others familiar with the surrounding country, and skilled in tracing lines of Government surveys and meanderings. I have carefully examined all these, and find their substance fairly and substantially set forth in counsel's brief, and I cannot do better than quote the same in full, omitting the names of the affiants:

"The affidavits show that, instead of covering an area of 1,900 acres, Ely, or Cedar Island lake is a body of water of about 650 or 700 acres only; that it is a permanent, deep and navigable lake, in some places running to a depth of sixty-five feet, having high and steep banks entirely surrounding it except at its outlet, rising in places to 35 feet above the water, and which are covered with a heavy growth of pine, fir, cedar, birch and other trees; that within the meander lines of said lake, as that line is shown on the Government plat of the township, lie 1,202 acres of fine, high, timber-land which has never been a part of the lake, having trees down to the water's edge, of more than four feet in diameter; that in 1878, two years after the alleged Government survey by Howe, the character of the lake and its surroundings were just what they are to-day, and, at that time, no monuments, marks or blazings alleged to have been made by Howe could be found by diligent search, and that none of said 1,202 acres of land surrounding the lake was formed by accretion due to receding waters; that a rise of many feet in the level of the lake would, owing to the steep banks, cover no appreciable quantity of land; that the outlet of the lake is the only low land surrounding it, and that, from the nature of the topography of the township to the southward, there
75 could be no rise in the lake; that the entire township south of the lake is lower than the banks of the lake and the land in question, so that if the lake had ever covered the land shown by the Howe survey within the meander line as delineated by him, the whole township would have been submerged and have formed one single lake; that, lying southerly and westerly of Ely lake, there are five other deep, navigable and permanent lakes, three of which are almost as large as Ely lake, but none of which is shown by the Howe survey; that, at divers times since 1878, careful and systematic search has been made throughout said township 57 for the surveyor's monuments and blazings referred to particularly in the field notes of said Howe, but that, in no instance, has a single monument or marking been found; save on the boundary line of the township, and those were distinct and readily discoverable; that no meander post or marking, either on the line shown on the Gov-

ernment plat, or at any other point about Ely lake, exists or has ever been found, though diligently sought after by wholly disinterested parties; that the outlet of the lake is shown by the pretended survey to leave the lake in section 11, and to run south-westerly, leaving the township in the western line of section 31, but, in fact, the outlet leaves the lake in section 2 and runs southeasterly, and empties into the St. Louis river in the southwest corner of section 25; that no such stream as the outlet shown by the Howe survey exists; that some of the section and quarter-section posts established by the field notes of Howe, and said to be blazed on certain described trees, are, in fact, estab-
76 lished at points in deep and permanent lakes where water is thirty feet deep; that there has been long known and used by the Indians a canoe route from the Saint Louis river through the chain of lakes referred to up into Ely lake; that in Ely lake are certain rocky islands, not shown by the Howe survey, rising just above the water, and upon which is a heavy growth of pine and other timber which cannot grow in water and which is of an age long antedating the alleged survey of 1878."

It is stated in your said office letter that the records of your office show that the lands in the sections named immediately bordering on the official meanders of the lake have all been disposed of; "mainly to the State of Minnesota, as swamp and over-flowed lands." Your office therefore concluded that the question as to the ownership of the lands between the meander line and the shore line was settled by the Supreme Court of the United States in Mitchell *vs.* Smale (140 U. S., 413); and Hardin *vs.* Jordan (*Id.*, 401).

The contention of counsel is that the doctrine announced in those cases is not applicable to the one at bar, in that there is no question of riparian ownership here; there has been no recession of the waters of the lake; hence no accretions beyond the meander line, but it is insisted that the land between the meander line and the shore line is not, and never has been, a lake bed, and by reason of the fraudulent survey, an area of about 1200 acres of land has been included in the lake that is and was actually Government land, and subject to homestead entry as such at the time the official map is al-
77 leged to have been made; that the rule that attaches accretion or reliction to the riparian title cannot be applied to this case, for the reason that meander lines were not run to and connected with the true shore line, but were so described as to leave a large area between these two points.

I am disposed to think this contention of counsel is sound. The showing made here is amply sufficient, in my judgment, to justify the belief that the survey by Howe was a palpable fraud upon the Government; that there was no attempt made to make the meander lines conform to the shore line; and that Government land does and did exist at the time the survey was made, reported and approved.

Under these facts, as they appear, I do not think the doctrine of riparian ownership is applicable to the question involved.

(See Granger *vs.* Swart, 1 Woodworth's C. C. Rep., 88; Lammers

vs. Nissen *et al.*, 4 Neb., 245, affirmed by the United States Supreme Court, Book 25, Lawyer's Co-op. ed., 562; Grim *et al.*, *vs.* Jeffrey, 75 Iowa, 20; and Whitney *et al. vs.* The Detroit L. Co., 78 Wis., 240.)

It will be observed that in 1878, two years after the survey, there was an entire absence of either meander posts, section or quarter-section corners, or any witness trees at the points called for in the field notes, except on the north and east boundaries of the township. While the *ex parte* statements submitted are not sufficient in themselves to warrant an order for a re-survey, yet they are deemed sufficient to require a hearing to determine whether the physical
78 facts actually exist on the ground, and also to establish the alleged fraud in the survey. This determination renders it unnecessary to discuss at this time any other question suggested.

Your judgment is therefore reversed, and a hearing is ordered. Notice of this hearing should be given to the owners of lots abutting on the meander line of the original survey.

The papers transmitted by your office letter "E" of December 15, 1893, are herewith returned.

Very respectfully, HOKE SMITH, *Secretary.*

DEFENDANTS' EXHIBIT 2.

116229

1895

J. B. S. F. F.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *November* 14, 1895.

I, S. W. Lamoreux, Commissioner of the General Land Office, do hereby certify that the annexed copy of an official letter from the Commissioner of the General Land Office, dated October 31, 1895, addressed to the surveyor general for Minnesota, directing him to contract for the survey of certain lands in township 57 north, range 17 west, 4th principal meridian, is a true and literal exemplification of the official record of said letter, on file in this office.

79 In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Signed) S. W. LAMOREUX,
Commissioner of the General Land Office.

[Seal of United States General Land Office.]

EXHIBIT 2—Continued.

E.
J. B. S.
94015–1895. F. F.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *October* 31, 1895.

(Address only the Commissioner of the General Land Office.)

The U. S. surveyor general, St. Paul, Minnesota.

SIR: Referring to the records and papers in the matter of the hearing in the petition of C. A. Burns, *et al.*, received with your letter dated September 9, 1895, an application for an oral argument by Copp and Luckett, attorneys, for opposing claimants, was allowed, and the hearing was set for October 23 last passed. At said hearing Mr. John R. Van Derlip appeared in behalf of the petitioners, and Copp and Luckett, attorneys for Murphy, *et al.*, were present,
80 and submitted arguments on certain legal points involved in the case.

After a full presentation of views by the attorneys for contestants, I concluded that a survey should be made of the public lands lying between the pretended old meander line of 1876, and the shore line of Cedar Island lake, in township 57 north, range 17 west, 4th principal meridian, State of Minnesota.

Therefore, you will enter into a contract with a surveyor of integrity and ability, to survey the public land designated above; the expense of said survey will be chargeable to the appropriation for the surveys of public lands for the current fiscal year.

Briefly stated, said survey will require:

1. Re establishment of certain section, quarter section and meander corners on the north boundary of the township (5 N., R. 17 W.)

2. The temporary establishment of the corners of:

Sections 1, 2, 11 and 12;
Sections 11, 12, 13 and 14;
Sections 10, 11, 14 and 15;
Sections 9, 10, 15 and 16;
Sections 4, 5, 8, and 9; and the quarter section corners between Sections 8 and 9, and 9 and 10.

3. The establishment of permanent meander corners, and the survey and permanent marking of the meander line of Cedar Island lake as given by the original field notes of Henry S. Howe, U. S. deputy surveyor, approved by the surveyor general for Min-
81 nesota, August 19, 1876. For the sake of brevity and definite description, said established meander line will be known and described as the old meander boundary, it being the *boundary* between the patented land and the public land to be surveyed as herein provided for.

4. The establishment of proper *permanent* meander corners at ordinary high water mark on the shore of Cedar Island lake, and the meandering of said shore line, *on the ground*, at ordinary high water mark.

5. The subdivision of all lands between the old meander boundary and the ordinary high water mark of the lake.

The surveys specified in the first three of the above paragraphs will be made to conform strictly to the original field notes of said surveys referred to in paragraph 3, while all surveys on the lake side of the "old meander boundary," will be made as directed by the "Manual of 1894."

It is evident that the "old meander boundary," when surveyed according to the original field notes, will not close on the meander corners. To provide for this contingency, you will please give in the special instructions, definite and detailed instructions (and an example illustrative of the same), to guide the deputy. This is a subject not mentioned or even referred to in the manual, or in any of the text books in general use; and, as the requisite instructions for the execution of the work will require an unusual application of well known principles, it is possible your office assistants
82 may be without the necessary information to prepare instructions which will pass a critical examination in this office and receive its approval.

If you have any doubts on this point, it may be well to apply to this office for the method to be employed and additional instructions.

You will please acknowledge receipt of this communication.

Very respectfully,

S. W. LAMOREUX,
Commissioner.

Due service of the within proposed case by copy is hereby admitted at Duluth, Minn., this 20th day of Sept., 1901.

JOHN R. VAN DERLIP AND
R. R. BRIGGS,
Attorneys for Defendants.

83 *Findings.*

STATE OF MINNESOTA, }
County of St. Louis. }

District Court, Eleventh Judicial District.

SECURITY LAND & EXPLORATION COMPANY, Plaintiff, }
vs.
G. A. BURNS and MARY A. BURNS, Defendants. }

SECURITY LAND & EXPLORATION COMPANY, Plaintiff, }
vs.
HENRY WECKEY and ROSALINE WECKEY, Defendants. }

The above entitled actions duly came on for trial before the undersigned, one of the judges of the above named court, without a jury, in their regular order upon the calendar for the March, 1901, general term of said court.

Messrs. John G. Williams and Billson, Congdon & Dickinson appeared for the plaintiff, and Messrs. Wilson & Van Derlip and R. R. Briggs appeared for the defendants.

By stipulation of counsel, the court duly ordered that said actions be tried as one, and they were so tried.

After careful consideration of the facts stipulated by the
84 respective parties in open court, and of the allegations and admissions of the pleadings, and of the argument of counsel, I find the following:

Facts.

1. The plaintiff is a corporation duly organized and existing under the laws of the State of Minnesota, and the defendants in each of the actions above entitled are husband and wife.

2. In 1876, township fifty-seven (57) north of range seventeen (17) west, in St. Louis county, Minnesota, was ordered by the General Land Office of the United States, to be surveyed, and a contract for the survey thereof was made by the U. S. surveyor general of the State of Minnesota with one H. S. Howe, who, by said contract, was constituted a deputy United States surveyor for said purpose. Under said contract, said Howe was required, and undertook and agreed to survey said township, to run out all section lines, and to set posts making all section and quarter sections corners throughout said township where the same could be marked upon the ground, and accurately to meander and establish upon the ground meander posts of all lakes and streams found to exist within said township.

3. Thereafter said Howe ran and marked the exterior lines of said

township, except the south township line, which had been previously surveyed, and set posts at all section and quarter section corners on said three exterior lines. He also set a meander post upon the north line of said township as surveyed by him, where said line running west from the northeast corner of said township first encountered the shore of Ely lake, or, as it is some times called, Cedar Island lake.

4. No survey of the interior of said township was ever made, and no section lines within said township were ever run by said Howe, with the possible exception of the west line of section thirty-six (36) thereof, and no section or quarter section corners were ever located, established or marked by him (with the possible exception of the northwest corner of section 36 aforesaid), and none of the streams or permanent lakes (of which there were several) within said township were meandered by him, and no posts of any description were ever set, nor any lines or bearing trees ever blazed, within said township, with the possible exception of a corner post at the northwest corner of said section 36.

5. Said Howe made and filed with the U. S. surveyor general of the State of Minnesota what purported to be field notes of a survey of said township made by him under said contract, purporting to give the length and directions of all interior section lines in said township, the location of all section and quarter section posts, and the bearing trees thereof, the character of the soil and timber in said township, and all other data and information required by the statutes of the United States and the rules of the United States General Land Office to be ascertained and reported by deputy surveyors in due course of making surveys of public lands.

6. With the exception of the description of the survey of the three exterior boundary lines of said township actually run by him, said field notes returned by said Howe were imaginary and fictitious, and the purported facts and data contained therein were not based upon any personal knowledge or inspection of the interior of said township, and were, in fact, false and erroneous.

7. From said purported field notes, it appeared that there existed in the northerly part of said township, lying in sections 2, 3, 4, 9, 10 and 11 thereof a lake known as Ely lake, or Cedar Island lake, with a surface area, as indicated by said field notes, of about eighteen hundred (1800) acres; in fact, instead of having an area of about eighteen hundred acres, said lake then was and still is a body of water not exceeding eight hundred (800) acres in area. It is a permanent, deep and navigable lake, having high, steep and heavily timbered banks, except about the outlet thereof. Said lake does not, in fact, touch section 11 at all, and covers only an area of very small extent (less than one-half of a forty-acre tract) in the southeast corner of section 4. Between the actual water line of said lake and the meander line thereof, as returned by the purported field notes of said Howe, there were at the time of the survey, and still are, at least one thousand (1,000) acres of high, tillable land, which has never been a part

of the lake, and which was and is heavily timbered with trees of more than a century's growth and growing down to the water's edge.

8. The field notes and report of survey made and filed by said Howe were approved by the surveyor general for the district of Minnesota, August 7th, 1876, and a plat of said township was
87 made in accordance with said purported field notes under the direction of said surveyor general and was approved by him on said 7th day of August, 1876, and a duly certified copy thereof was transmitted by him to the proper local U. S. land office on the 24th day of August, 1876, and another duly certified copy of the same was by him forwarded to the General Land Office of the United States, and filed therein August 23rd, 1876, and was by that office accepted as representing a correct survey of said township and as the official plat thereof. Such survey and plat of said township were the only ones ever made by or under the authority of the United States Government. [A true and correct copy of said township plat is hereto annexed and marked "Exhibit A."]

["Exhibit B," hereto attached, correctly delineates the meanderings of said Ely or Cedar Island lake, the outer meander line representing that marked upon the official plat and as shown by the field notes of said Howe, and the inner meander line representing the lake as it actually exists and as it did exist in 1876, when said field notes were made and filed. A portion of the land lying between said lines is the land involved in these actions.]

9. Since the spring of 1892, the defendants have been in actual and continuous occupancy of a portion of the land lying between the meander line described and returned by said Howe in his said purported field notes, and as located upon the Government plat of said township, and the actual water-line of said lake. Said
88 occupancy has been under the claim that the lands occupied by said defendants were and are unsurveyed Government lands subject to homestead entry, and that they have not been patented by the Government. The defendants have made valuable and lasting improvements upon the lands occupied by them respectively.

10. According to the plat of said township, the land in section 4 was divided into eight fractional Government lots, lots 1, 2, and 8 comprising all of the land in the east half of said section, containing an aggregate of 122.3 acres, and lots 3, 4, 5, 6 and 7 containing an aggregate of 182.80 acres, comprising all of the land in the west half of said section.

11. Between December, 1879 and March, 1887, all of said Government lots [and all the surveyed lands within said township] were patented and conveyed by the United States, pursuant to the laws relating to the disposal of public lands, and by patents containing the usual clause, "according to the official plat of the survey of said lands returned to the General Land Office by the surveyor general." By divers mesne conveyances from said patentees, the title to said lots 3, 5, 6 and 7, containing according to said plat

and to the patents of said lands, the following quantities of land, respectively: Lot 3, 50.37 acres; lot 5, 34.75 acres; lot 6, 30.5 acres; and lot 7, 25.25 acres; became vested in the plaintiff in the year 1891 and prior to the commencement of these actions; and the plaintiff is still the owner thereof, and, as such owner, has within the boundaries of said lots, as shown upon said plat, and
89 within the meander line of said lake described in said field-notes, the full quantity of land above described as contained therein.

The title to said government lots one (1) and eight (8) (which are the only lots in the east half of said section 4 apparently bounded by said lake) was conveyed by Government to certain patentees, and the patent title thereafter became vested in Simon J. Murphy and others, by whom a quit-claim deed was executed and delivered to the plaintiff in the year 1892, prior to the commencement of these actions, purporting to grant and quit-claim to the plaintiff that part of the southeast quarter of said section 4 lying southerly and westerly of a line drawn from the center of said section to the southeast corner thereof, and also all the interest of said grantors, in the west half of said section. At the same time, the plaintiff executed and delivered to said Murphy and others a quit-claim deed purporting to convey to them that part of the east half of said section 4 lying northerly and easterly of a line drawn from the center of said section to the southeast corner thereof.

12. If the side lines of said lot one (1) were produced and extended in straight lines southerly from the southern boundary of said lot, as shown upon the Government plat and as herein found and determined, to the said Ely lake, within said section 4, and the said lot were so extended, it would in that event appropriate substantially all the frontage of said lake within said section, and would then contain about one hundred and thirty-nine (139) acres of land.

90 If the side lines of said lot eight (8) were similarly produced and extended in straight lines southerly from its southern boundary, as shown upon the Government plat and as herein found and determined, to the southern boundary of said section, and the said lot was so extended, in that event the east line of said lot would touch said Ely lake in said section 4, and [about one-third of a mile of lake frontage] would then be contained in said lot, and said lot would then contain about one hundred and six acres of land.

If the side lines of said lot three (3) were produced and extended in straight lines southerly from its southern boundary, as shown upon the Government plat, and as herein found and determined, and the said lot was so extended to the southerly boundary of said section 4, then in that event the said lot would not touch said Ely lake, nor would there be any lake frontage thereon, and said lot would then contain one hundred and sixty acres of land; neither would said lines nor said lot reach said lake, no matter how far extended.

If the side lines of said lot five (5) were produced and extended easterly from the eastern boundary of said lot, as shown upon the

Government plat, and as herein found and determined, to the eastern boundary of said section 4, the northern line of said lot following the old meander line of said lake and the southern line of said lot being produced and extended in a straight line, and said lot was so extended, then in that event the said lot would not touch
91 said Ely lake, nor would there be any lake frontage thereon, and said lot would contain about one hundred and twelve (112) acres of land.

If the side lines of said lot six (6) were produced and extended in straight lines easterly from the eastern boundary of said lot, as shown upon the Government plat and as herein found and determined, to the eastern boundary of section 4, and said lot was so extended, then in that event the said lot would not touch said Ely lake, nor would there be any lake frontage thereon, and said lot would then contain one hundred and sixty (160) acres of land.

If the side lines of said lot seven (7) were produced and extended in straight lines easterly from its eastern boundary, as shown upon the Government plat and as herein found and determined, to the eastern boundary of said section 4, and the said lot was so extended, in that event the south line of said lot would touch said Ely lake, and a few feet of lake frontage would then be contained in said lot, and said lot would contain about one hundred and thirty-nine (139) acres of land.

I further find that it would be impossible to extend said lots within their respective side lines, as above specified, without instant and irreconcilable interference with each other, and that no one of said lots has any prior or superior right over any of the others to be so extended.

[13. That prior to the patenting of any of the lands in this township, an affidavit made by one claiming to know the facts was forwarded through the receiver of the local land office and the surveyor general of Minnesota to the Commissioner of the General
92 Land Office at Washington, wherein were various statements tending to show that what purported to have been a survey of said township made by said Howe was, as to the northerly and westerly portions thereof and including the lands in question, false and fictitious; that transmitted therewith were two letters from said receiver of the local land office and one from the surveyor general of Minnesota, tending to discredit the affidavit in question and to indicate that the statements therein made were based upon mistake; that at the time said affidavit and communication were transmitted, as aforesaid, the surveyor general of Minnesota proffered a request that a competent surveyor be employed to examine the surveys made by said Howe, including the lands in question; that upon consideration thereof the Commissioner of the General Land Office declined to grant such request.]

Conclusions of Law.

I.

Plaintiff is the owner of Government lots three (3), five (5), six (6) and seven (7), in section four (4) of township fifty-seven (57) north of range seventeen (17) west, in St. Louis county, Minnesota, containing the quantities of land hereinbefore referred to and indicated upon the said Government plat, and the pretended meander line of Ely or Cedar Island lake, as the same is described in said purported field-notes and as delineated upon said plat, is the boundary line of the land owned by plaintiff in said lots.

93 II.

The defendants are not, nor is either of them in possession of occupancy of any part of the land in said section four (4) belonging to the plaintiff; nor do said defendants, or either of them, withhold from the plaintiff any land of which it is the owner or to the possession of which it is entitled.

III.

The defendants in each of the above entitled actions, respectively, are entitled to judgment therein, that plaintiff take nothing in said action and for their costs and disbursements.

Dated September 4, 1901.

By the court,

WM. A. CANT, *Judge.*

Memorandum.

This is an action in ejectment. Plaintiff must therefore recover, if at all, on the strength of its own title. It is attempted to make out such title to the land here in dispute through patents to certain fractional lots, most of them fractional forties, which, according to the surveyor's plat, appeared to abut upon Cedar Island lake, as shown by the meander line delineated on such plat. In fact, there was no lake or other body of water in the vicinity of the meander line of these lots as delineated on the plat to which it would be applied, and Ceder Island lake was distant from half a mile to three-quarters of a mile therefrom. Traveling by the Government
94 lines extended, such lake was in some cases distant a mile or more, while in some cases such line, if projected, would not reach the lake at all. This intervening area, delineated as covered by the waters of the lake, is what is here in dispute. In truth, it comprises several hundred acres of "high, tillable land, which has never been a part of the lake, and which was and is heavily timbered with trees of more than a century's growth and growing down

to the water's edge." The lake when reached has "high, steep and heavily timbered banks."

Plaintiff contends that the boundaries of its fractional lots, as they are pictured upon the plat, should be enlarged and extended through and across the forest so as to embrace the lands in dispute. By so doing, patents purporting on their face to convey 223.92 acres of land would operate to convey about 520 acres or upwards, all of the same general character; and patents purporting to convey thirty acres might possibly be construed as conveying as much as 160 acres. The patentees, of course, paid only for the acreage specified in the patents.

The question is, Where are the boundaries of plaintiff's fractional lots? Did the patents for such lots cover the land in dispute, or did they not? None of the subsequent conveyances have any bearing upon the question. The question is, What can fairly be said to have been the *bona fide* intention of the parties,—the Government and the patentees? This must be discovered by an inspection of the patents themselves, and by applying to them the surrounding facts and conditions which actually existed and attended this issue.

95 Plaintiff invokes the general rule that meander lines are not lines of boundary, and that in such cases the real boundary is the natural monument, the thing or body meandered wherever that may be. This is the general rule, for two reasons: First, because there is less liability of errors or mistake when natural monuments are referred to; and second, because meander lines, from their very nature, are intended to be only an approximately accurate survey of the shore line faithfully made, showing its general contour and cutting across both headlands and inlets. When the body is actually meandered, all the land to the water is considered as surveyed, and this is the usual and well known method of surveying it. If there are small areas of land without or small areas of water within the meander line, it is but incidental to the work which is approximately correct. The intention, therefore, is very general in such cases to convey to the river or lake in question, irrespective of whether the delineated meander line follows the shore with absolute precision or not. The application of the rule invoked by plaintiff almost invariably discloses the true intention of the parties; and hence it has become firmly established in the law as the general rule applicable in all ordinary cases.

This rule, however, is not universal, and there are several suggestions which may be made, and which it would seem serve to destroy its applicability in this case:—First, this is not an ordinary case. It is quite an extraordinary one. It introduces elements wholly lacking in the cases relied upon by plaintiff. In those cases the lands were all surveyed in the ordinary way. The sur-

96 veys were made in good faith and in the usual course of business, as such things are usually done. In some of the cases this is considered of sufficient importance to receive specific mention by the courts. (Mitchell *vs.* Smale, 140 U. S. 414; St. Paul *vs.* First Div. &c., 26 Minn., 34.) In most of the cases, the lands without the

meander line were not greater in area than is usual and incidental to the performance of such work. It was therefore considered fair in those cases to hold that the usual rule applied and that the land to the body of water was conveyed. In some cases, it was not clear that the land in dispute was not the result of reliction or accrition, as in Forsyth *vs.* Smale, 7 Biss. 201; and in others mention is made of the fact that the disputed tract was or may have been subject to inundation, and may have been partly covered when the survey was made. All this is to make clear that in those cases the survey was made in good faith.

The cases which on first inspection seem to go the farthest in support of plaintiff's view, and to be themselves extraordinary, are the Mitchell-Smale case in 140 U. S. and the Schlosser case in 96 Iowa. But in the first case the meander line was actually and in good faith run just where it purported to have been, and the character of the land without the line, a projecting low point subject at some stages — water to partial inundation, was such as to fairly show that at the time the plat was made there was no intention other than to consider the survey in good faith as complete and the projecting spit of land as a part of the within the meander line. It is just such projections as this that a meander line is not
97 intended to follow, and so the decision says. It may be noted that even in that case three of the present judges of the Supreme Court dissented from the decision on its merits. In the Schlosser case the land in dispute was mostly high and dry, but there was no pretense that the meander line was not actually and in good faith run just where it purported to have been; the body of water meandered had a very considerable area compared with the neck of lake here involved, and the error, therefore, was much less glaring; for aught that appears, the land may have been a projecting portion of the shore line, and therefore, clearly within the rule, and generally speaking, the circumstances were not such that the court felt justified in considering the case as without the general rule.

Second. Cedar Island lake is a practically impossible boundary. Where the strip in dispute is a comparatively narrow one, or even one of considerable width on one side only of a body of water, and where Government lines all running in the same direction may be so extended as to appropriate the land without conflict with fractional lots formed by lines running at right angles to those first mentioned; it is comparatively easy for courts to render decisions respecting the ownership of the land in dispute, which to all minds save those illumined by a considerable experience at the bar, seem extraordinary. But where, as in this case, by a fiction of the surveyor, we have the spectacle of fractional lots facing in such varying directions that their lines if extended would cross each other in the utmost confusion on the face of the land claimed,
98 the absurdity of attempting to extend the boundaries of such lots so as to include these additional hundreds of acres of upland seems quite apparent. Unless for this particular case the courts

are to give birth to some new rule of law there is no known method of apportioning to the various fractional lots the land now sought to be appropriated by plaintiff. It cannot be done. In other words, although the contention of plaintiff's counsel has been made throughout with eminent fairness and sincerity, the results to be attained in such a case as this, should plaintiff prevail, are really so gross that up to this time courts have never felt called upon to promulgate rules which would further their accomplishment.

It is urged by plaintiff that inasmuch as the title to all the lots here involved is now vested in one owner, these difficulties which diverse ownership suggests need not be met; but if meeting them would serve, even by illustration, to make clear where the right of this contention lies, they must be met and considered.

Third. It cannot be said that the boundaries of the lots here in question should extend to any particular body of water,—Cedar Island lake, for instance,—because no such body of water was ever in fact meandered. It may be apparent that the meander line could not be referred to any other body of water, but it is equally apparent that it should not be referred to that. Parties may be heard to urge that when surveyors in good faith fairly follow the sinuosities of the shore line, the patents afterwards issued shall carry to the
99 water, even though there be projecting spits or limited low areas without the meander line, and the Schlosser case would say even though there may be a considerable area of high and dry land without the same; but such contention should not be held good where the evidence shows that no such line was ever run, and no such body meandered, and when the so-called meander line is merely a fugitive or arbitrary line.

This so-called meander line, if traced on the ground as delineated on the plat, would be found to run through the woods for miles not near or approaching any body of water, distant more than half a mile, sometimes more than three-fourths of a mile in a straight line from the lake in question, and the lake at its nearest part, when reached, found to be a neck of water averaging less than 120 rods in width.

The understanding of the courts is that "a meander line by its exclusion and inclusion of irregularities of contour produces an average result closely approximating to the truth as to the quantity of upland contained in the fractional lots bordering on the lake or stream."

140 U. S., 413.

It is supposed to be "an accurate survey of the river" or lake.
10 Minn. 74, 75, (Gil.)

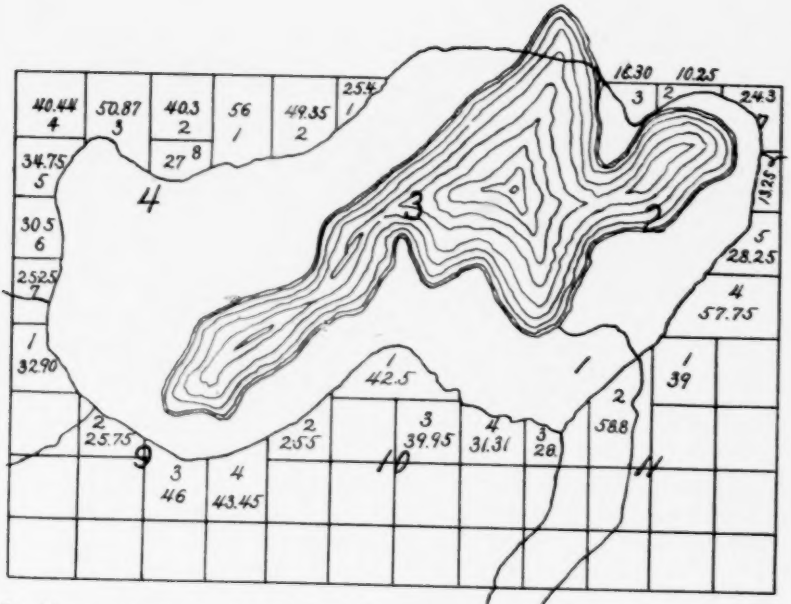
Under the definitions and the understanding thereof by the courts, the line here in question meandered nothing, and under the law everybody interested was bound to know that it did not. It will hardly be seriously contended that such line was ever run on the

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

11492

No 127
S. L. & E. Co. } p. 116b
vs.
Burns

Exhibit B



Sections 2. 3. 4. 9. 10 & 11 Town No. 57. Range 17.
St Louis County, Minnesota.

82

ground as the meander line of Cedar Island lake. Without
100 doubt, the line was an arbitrary one, made on paper only,
and for the purpose of saving labor and expense to the surveyor. Under the rules and practice alluded to, the land without the line in any event was never surveyed and could not be patented. The grossness of the work stamped the survey as indubitably fraudulent and in such conclusive manner that all might see and know.

Fourth. What are nominally meander lines do not necessarily skirt any body of water, and they may in some cases be or become boundary lines.

33 Ore., 274,
161, Ill. 462,
10 Fed. Cases, 961,
85 Fed. 45,
159 U. S. 40.
175 U. S., 308.

Fifth. There must be some limit to the length courts will go in search of the water body where none is found at or near the place wher- the same is delineated on the plat. The boundaries of fractional lots will not be extended indefinitely where they appear by the plat to abut on a body of water which does not in fact exist at or near the place designated on the plat;—

In other words, although the general rule relied upon by plaintiff is correct, there come times and there are cases where it no longer applies.

54 Minn. 299.
76 Minn. 400.
78 Wis. 240.
33 Ore. 274.
101 161 Ill. 462.
10 Fed. Cases, 961.
159 U. S. 45.
175 U. S. 300.

Plaintiff contends that in such cases some action must be brought in the courts to correct the survey, and if patent has issued to adjust the rights of the patentees and the Government; that before this is done the legal effect of the patent is always to convey to the body of water wherever it may be.

Our own court has said: "There may be cases in which the error in the Government survey is so gross that the purchase of the fractional or supposed fractional sub-division of Government land will not take to the short of the stream or lake although the plat of the sub-division calls for such shore as one of the boundaries."

76 Minn. 400–401.

This, if adhered to, is determinative against plaintiff in one of its main contentions. That is, in such cases, the error or fraud being shown, and certainly if it be such that purchasers must take notice

thereof, the courts will declare as a matter of law that the patent in question does not convey to the body of water.

Although the Supreme Court of the United States has perhaps never so expressly declared, a fair reading of its decisions will show that such is assumed to be the rule. In determining whether this statement is correct, we may in addition to 159 U. S. 40, and 175 U. S. 300, bear in mind the formal affirmance by that court of Lammers *vs.* Nissen (4 Neb.), though on another point, the approval
102 of the charge to the jury in the lower court involved in 159 U. S. 40. The instructions given to the jury by Mr. Justice Miller of that court upon the trial of Granger *vs.* Swart, 10 Fed. Cases 961, the views of the dissenting judges in Mitchell *vs.* Smale, 140 U. S., who not only recognized that such was the rule, but were in favor of applying it to the facts before them, and the grounds upon which all the decisions are based which have to do only with the application of the rule in ordinary cases.

Aside from this, the State courts of Illinois, Oregon, Nebraska and Nevada agree with our own upon this point, and are unequivocally opposed to plaintiff's views. The supreme court of Wisconsin is equally opposed to plaintiff, but has a theory of its own, as will be indicated.

In addition, the cases at
98 Fed. 924,
93 Va. 258,
83 Tex. 169, and
108 Cal. 44
are engaged with the consideration of questions closely allied to those here involved, and so far as they may aid by analogy of reasoning they are not in support of plaintiff's views. Upon some grounds, however, they are capable of being distinguished.

The general rule then, applicable to all ordinary cases, is that meander lines are not lines of boundary, but that the body of water whose margin is meandered is the true boundary; but further and just as firmly established is the rule that there are extraordinary
cases where the courts will not go to the body of water nor
103 extend the boundaries of fractional lots to that distance but will reject that element of the description entirely.

The question then resolves itself into an inquiry as to what the rules of limitation are which shall guide the courts in the consideration of each particular case as it may arise, to what cases may the rule relied upon by plaintiff be applied, and to what may it not?

1st. It would seem that in a case like this, where the fraud is found to be so gross that all must take notice of it, the courts would certainly not attempt a search for the body so fraudulently delineated. In such cases it should follow directly as a matter of law that the boundaries of fractional lots will not be extended to any body of water which, by the fraud or mistake of the surveyor perfectly apparent to anyone who care- to see, has been given a wholly erroneous location on the plat.

2nd. Plaintiff suggests that when the natural body is not found

where delineated on the plat, if there be any limitation at all, the search therefor would be extended at least to the external boundaries of the section in which the fractional lots are delineated, and that if the body of water were found within the section lines that the fractional lots would extend thereto as their boundary. This rule would be an arbitrary one, its application would at times be attended with great confusion, as in this case, and it is unsupported by authority. It may be fancied that it would not prove satisfactory if the so-called meander line were just within the section, and the real shore of the lake were half a mile without and beyond the
104 same, instead of conditions being reversed in so fortunate a manner for plaintiff's argument, as is the case here.

3rd. The rule established by carefully considered cases in Wisconsin is that where the body of water is not found at the location designated on the plat, the courts will go in search thereof to the next quarter-quarter section line, and if the natural monument is not there found, will enlarge the boundaries of the fractional lot to that line, but no further.

78 Wis., 240.

This rule and case have been referred to with seeming approval, certainly not with disapproval, by our own court at

54 Minn., 299, and
76 Minn., 400–401;

and also by the United States Supreme Court at
159 U. S., 45.

Whether or not those courts approve the specific rule adopted in Wisconsin, they certainly agree that cases of gross mistake or fraud may arise where the patent would not convey to the body of water which nominally had been meandered.

The deduction of plaintiff that the rule in 78 Wis. has been discredited by the U. S. Supreme Court, in Hardin *vs.* Jordan, 140 U. S., would seem on investigation to be incorrect. The case of Hardin *vs.* Jordan had to do solely with the question of riparian rights, the ownership of submerged lands beyond the shore line. The opinion so specifically states at two separate places therein, on pages 380 and 388 thereof. The case there criticised was a self-con-
105 demned Michigan case, which attempted to lay down a rule for apportioning submerged lands. But the rules for determining what portion of submerged land shall be allotted to a particular section of the shore line to which it is appurtenant has little analogy with the rule which should determine to what length the court will go in search of a natural monument which is not found at the place designated on the plat, before it will be conclusively presumed that there has been fraud or gross error in the survey, and that the call for the natural monument must be rejected.

Much may be said in favor of the Wisconsin rule. It is, however, subject to the same objections which may be urged against the rule

suggested by plaintiff. It is certain, but not uniform in its application. The so-called meander line may very nearly approach the quarter-quarter line in one case and be nearly eighty rods from it in another, so that the search for the body claimed to have been meandered might in some cases extend nearly eighty rods, while in others it *might* be limited to one, just as under the rule suggested by plaintiff such search might in some cases extend nearly a mile, and in others be limited to a yard. The rule should be both certain and uniform.

Again, if the Wisconsin rule, limiting the search to the quarter-quarter line, is to be adopted at all, it would seem that the rule should be not that the court will search for the body of water as far as the quarter-quarter line, and if such monument is not there found will extend the boundaries of the lot to such line, but that if such natural monument shall not be found within such line, the
106 court will conclusively presume against the right of extension thereto and will resort to other means to define and locate the grant. Such seems to have been the understanding of our court as to what the Wisconsin rule, if adopted at all, should be.
54 Minn. 299.

The question is not whether plaintiff's contention is correct, that we must in all cases extend the boundaries of the fractional lots to the body of water which nominally has been meandered. It may fairly be said that under practically all the authorities that is not the rule. Where the contrary is not declared, it is at least assumed. In substance, all admit that cases may arise where such general rule is wholly inapplicable. The question is, what is the true rule which shall be certain and uniform in its operation, and which may be applied to the various cases as they arise, with the result that justice shall be done.

From an examination of all the authorities, it may be said :—

5th. That the true rule is and should be that if under the definitions and the expressed understanding of the courts the line in question may fairly be considered a line which meanders some body of water, then the land to such body will be considered as surveyed and a conveyance by reference to the plat, on which such meander line appears, will include the land to the body of water actually meandered ; but if under such definitions and expressed understanding the line cannot be fairly considered as the meander line of any existing body of water, then no particular body of water can
107 be referred to as a boundary of the tract sought to be conveyed, and other means must be made use of to determine its extent.

Plaintiff argues that such a rule would render the patents in all such cases void for the reason that it would be uncertain what area would be covered thereby. Patents are simply forms of conveyance, and in such cases as those referred to they have no greater infirmity than the multitude of deeds constantly coming before the courts for construction by reason of ther conflicting calls. These deeds are not

void for uncertainty. They are open to question and call for construction by the courts, when applied to the ground in dispute. Deeds and patents to be valid are not required to be couched in language beyond all possible question. Almost any such instrument may be made the subject of litigation, and of judicial construction, but if the alleged uncertainty does not transcend the power of the courts to determine its true meaning, the conveyance will stand. The uncertainty which renders an instrument void is not the uncertainty which will admit of question, but the uncertainty which will not admit of judicial construction.

A patent ambiguity will render an instrument void for uncertainty. This is not such a case. In case of a patent ambiguity "it is competent to resort to parol proof showing all the circumstances from which a legal inference can be drawn, that one or another line was intended by the ambiguous description used in the deed." The patents here involved are not void. Whether the lands within the meander line were actually surveyed or not, the Government
108 having conveyed by patent and received pay for the area designated on the plat as within such line, it cannot now assert that the patents did not convey the minimum area to which they could be applied.

In regular order, the next question would be whether, in this case, under the rule given, the line nominally delineated on the plat as the meander line of Cedar Island lake may fairly be considered as in fact a meander line of that body of water. It has already been answered. In my opinion, it cannot. If the lake were ten miles distant no one would claim that the line could be considered a meander line of that body of water. Its meaning would not admit of such an application of the term; neither will it here.

If, then, the lots do not extend to Cedar Island lake as this boundary, what are the other means at hand, which, under the rule, must be resorted to for the purpose of defining and locating the grant,—referred to at 54 Minn. 299? It is an instance where the call for the natural monument must be disregarded, and as in many other cases, by force of circumstances the so-called meander line, which is accurately described in the field-notes, becomes a line of boundary.

33 Ore. 274,
161 Ill. 462,
10 Fed. Cases, 961,
85 Fed. Rep. 45,
159 U. S. 40,
175 U. S. 308.

109 The lands without the meander line were never in fact surveyed, and as to them at least no one is estopped from asserting the truth. The character and quantity of this unsurveyed tract was such that all persons were bound to take notice that it was in fact unsurveyed. It was not a headland; it was not a partially formed accretion, subject to be washed away; it was not lowland, subject to inundation; it had no peculiarity of feature whatever,

which to any sane mind would serve to justify or excuse its being left without the meander line as the result of any survey made in good faith. If unsurveyed, and if no one is estopped from asserting that fact, then it was not subject to patent, and no one is estopped from asserting that.

The inquiry throughout is to ascertain what may fairly be said to have been *bona fide* the intention of the parties to the patents at the time they were issued. It may be borne in mind on entering this field that it is a very arbitrary rule by virtue of which we presume as to the intention of the Government officials having in charge the disposition of the public lands. Whatever may be the rule and the reason thereof as to a private individual interested in a conveyance of lands, we all understand well enough that it is a practical impossibility that Government officials should know anything of the condition, character or quantity of public lands other than what is disclosed by an inspection of the plats and field-notes returned by the surveyor generals. Having in mind the respective positions of the two parties to each of these patents, and the knowledge which they actually had, it could not reasonably be said that it was
110 the intention of the Government to accomplish what is now urged by the plaintiff. All the circumstances are inconsistent with any theory other than that the Government officers knew nothing whatever about this large intervening tract, and could therefore have had no intention of conveying it.

But leaving out of view this real position, and assuming that both had equal knowledge, what can it fairly be said was the understanding and intention of the patentees, and what did they respectively in good faith understand was the intention of the Government with respect to the land conveyed?

To warrant a determination in plaintiff's favor, we must, from a consideration of all the circumstances, be able fairly to deduce therefrom the inference that in good faith it was the understanding and intention of both parties:

(1.) That having in mind what a meander line is, viz: "an accurate survey" of the shore line, at least an approximately accurate one, and having in mind its purpose in Government surveys, which is to determine the amount of land for which, in case of sale, the purchaser shall pay, and bearing in mind the duties of the land officers to the public generally, nevertheless the line in question should be considered the meander line of the distant Cedar Island lake.

(2.) That the land in dispute, though of so great an area, and though without any peculiarity of feature which would excuse, or justify or explain the leaving it without the m-ander line, should nevertheless be considered as surveyed land within the rule
111 that when a survey is made in good faith in the usual course of business, a meander line does not and cannot follow every winding turn of the shore line, but is a series of tangents, and that limited areas of headlands which in the usual course of business as such surveys are ordinarily made would fall without the line are to

be considered a part of that within the line, and as surveyed land equally with that.

(3.) That the patentees should be entitled to claim the land lying between the meander line as delineated on the plat, and the actual waters of the lake, although under the peculiar conditions surrounding this case there was no known rule by which such land could be apportioned to the various fractional lots, and a conflict of interests would certainly result. In other words, although both parties at the time understood that it was practically impossible to even conjecture what was being conveyed by any particular patent.

(4.) That parties paying for twenty-seven acres or thirty acres and receiving patents calling for those acres, should be entitled to claim possibly 160 acres, and that side lines delineated as forty or fifty rods in length should be considered as extending possibly 300 rods or more.

(5.) In addition to all this, there must have been in my opinion some element of estoppel which would now prevent the Government from insisting that the patent should be given its limited and strict legal effect, for the legal effect of the patent could not be enlarged by the understanding of the parties, except upon the ground of estoppel.

All this cannot be done or found. Even if it be assumed
112 that both parties were equally informed, which is a violent assumption when the Government is a party, it must be held that both knew and recognized the fraud or gross error in the survey, and the legal consequences which must follow as a result; that both knew, in any event, the land without the meander line was unsurveyed and not subject to patent; that both knew and recognized the consequences which attached as a matter of law where a line delineated on a plat and denominated a meander line was not in fact such within the meaning of that term.

There is no issue upon the question of plaintiff's being a purchaser in good faith, but as bearing upon the question of estoppel it may be said that it could not in any event be heard to so claim. It had no right to indulge in the convenient theory that its lands extended to the lake. "One receiving a patent will not ordinarily be heard to insist that by reason of an error on the part of the surveyor more land was bought than was paid for, or than the Government was offering for sale."

175 U. S. 300.

The patents, when issued, conveyed a definite quantity of land. Their true meaning and effect, when applied to the land, was capable of ascertainment—and subsequent conveyances have not operated to enlarge the grant. The same notorious conditions which marked this survey at the first and served to warn the original patentees of the true limits of their grant have been continuing proclamations which bound each of their successors.

That there are cases where as a matter of law patents do
113 not operate to convey lands to the body of water which nominally has been meandered is thoroughly established, and if there are such cases, this in my opinion should be one.

I am not unmindful of the fact that upon questions closely allied with those here involved, and on a consideration of evidence some of which must have been identical with that introduced in this case, distinguished judges appear to have reached conclusions at variance with these. This calls for no comment here further than to say that I have given their opinions the careful consideration to which such eminent authority is entitled without being able to agree with their views therein expressed.

WM. A. CANT, *Judge.*

114 *Notice of Motion to Amend Findings.*

STATE OF MINNESOTA, }
County of St. Louis. }

District Court, Eleventh Judicial District.

SECURITY LAND & EXPLORATION COMPANY, Plaintiff, }
vs.
G. A. BURNS and MARY A. BURNS, Defendants. }

SECURITY LAND & EXPLORATION COMPANY, Plaintiff, }
vs.
HENRY WECKEY and ROSALINE WECKEY, Defendants. }

To Messrs. Wilson & Vanderlip and R. R. Briggs, attorneys for defendants in the above entitled cases, respectively.

GENTLEMEN: Notice is hereby given that on the 14th day of September, 1901, at 9:00 o'clock in the forenoon, the plaintiff in said causes will, at the court house in the city of Duluth, move the court that it modify the findings of fact heretofore filed in said causes and make additional findings as set forth in the form of motion hereto attached; that said motion will be based on the pleadings, stipulations
115 of parties in said actions, and the evidence presented on the trial of the same.

Dated Sept. 13th, 1901.

BILLSON, CONGDON & DICKINSON AND
JOHN G. WILLIAMS,
Attorneys for Plaintiffs.

It is hereby stipulated that the motion to be made as indicated in the above notice may be made at the time and place therein stated, due notice of the same being hereby admitted.

WILSON & VAN DERLIP AND
R. R. BRIGGS,
Attorneys for Defendants.

Motion to Amend Findings.

STATE OF MINNESOTA,
County of St. Louis.

District Court, Eleventh Judicial District.

SECURITY LAND & EXPLORATION COMPANY, Plaintiff,
vs.
G. A. BURNS and MARY A. BURNS, Defendants.

SECURITY LAND & EXPLORATION COMPANY, Plaintiff,
vs.
HENRY WECKEY and ROSALINE WECKEY, Defendants.

Now comes the plaintiff in the two above entitled actions and
116 respectively moves the court that the findings of fact by the court as heretofore made under date of September 4th, 1901, and then or subsequently filed in the office of the clerk of said court, be amended as follows:

1st. At the end of paragraph 8 in such findings add the following statement, viz: "A true copy of said township plat is hereto annexed and marked 'Exhibit A.'"

2nd. Annex also to the findings of fact a copy of the township plat referred to in such finding.

3rd. Attach also to the findings of fact a copy of the plat Exhibit "B," which was introduced in evidence at the trial; and following the amendment hereinbefore proposed and preceding the ninth paragraph of the findings as made, add the following: "Exhibit B. hereto attached correctly delineates the meanderings of said Ely or Cedar Island lake, the outer meander line representing that marked upon the official plat and as shown by the field notes of said Howe, and the inner meander line representing the lake as it actually exists and as it did exist in 1876 when said field notes were made and filed. A portion of the land lying between said lines is the land involved in these actions."

(Here follow diagrams marked pp. 116*a* & 116*b*.)

4th. In paragraph 9 of the findings of fact, strike out the words "subject to homestead entry and," also the word "they," such language not being embraced in the stipulations of facts in the case.

5th. In the first line of paragraph 10 of the findings of fact, after the word "township," insert the words "as appears from the plat hereto attached marked 'Exhibit A.'"

117 6th. After paragraph 10 in the findings of fact, insert the stipulations Nos. 8, 9 and 10, in place of paragraph 11 of the said findings.

7th. Strike out the findings embraced in the twelfth numbered paragraph, extending to the bottom of page 7, in view of the fact that by introducing the plat of the township in the findings of fact, the statements embraced in said paragraph 12 became unnecessary as findings of fact.

In case this motion is denied, then plaintiff moves that the language "a few feet of lake frontage," in the eighth line from the bottom of page 7 be changed so as to read "about one-third of a mile of lake frontage."

8th. That the court find specifically that prior to the patenting of any of the lands in this township an affidavit executed by a person who alleged therein that he had explored the western and northern parts of said township, and that he was qualified to state the facts therein set forth had been presented to the Commissioner of the General Land Office through the action of the register of the local land office at Duluth, and of the United States surveyor general for the State of Minnesota, tending to show that what purported to have been a survey of this township by said Howe was, so far as the western and northern portions of the same are concerned, and embracing the lands in the vicinity of Cedar Island lake, false and fictitious, and that no marks of said Government survey could be found on the ground, excepting, however, the survey of the exterior lines of said township. And thereupon, a request was preferred by the said surveyor general to the Commissioner of the General

118 Land Office, that a re-survey of said lands in this township be made. That subsequently, upon further representation to the Commissioner of the General Land Office, by letter, of a fact tending to discredit such affidavit, the Commissioner of the General Land Office declined to order a re-survey of said lands, and subsequently patents were issued of the lands in this township, as herein elsewhere more specifically set forth.

If the court shall decline to find, as above requested, then the plaintiff moves that the court find the facts in regard to the subject therein referred to as disclosed by the evidence in the case.

9th. That the court find whether or not there existed at the time of the survey by said Howe, made or purported to have been made, any object other than Cedar Island lake with reference to which the meander line shown in said field notes and delineated on said Exhibit A. could have been made or to which it could be referred.

BILLSON, CONGDON & DICKINSON AND
JOHN G. WILLIAMS,
Attorneys for Plaintiff.

119 *Order Amending Findings.*

STATE OF MINNESOTA,
County of St. Louis.

District Court, Eleventh Judicial District.

SECURITY LAND AND EXPLORATION COMPANY, Plaintiff,
vs.
G. A. BURNS and MARY A. BURNS, Defendants.

SECURITY LAND & EXPLORATION COMPANY, Plaintiff,
vs.
HENRY WECKEY and ROSALINE WECKEY, Defendants.

The plaintiff in the two above entitled actions having moved the court to amend the findings heretofore made and filed herein, and the matter having been argued by counsel for the respective parties, and the court having duly considered the same,

It is hereby ordered that the said motion be and the same is hereby granted to the extent following, to-wit:

1. That paragraph 8 of said findings of fact be and the same is hereby amended by adding at the end thereof the following words: "A true copy of said township plat is hereto annexed and marked Exhibit A;" and by also annexing to the said findings a copy of said township plat above referred to and designated as said Exhibit A.

120 Also, that said paragraph 8 be further amended by adding to the findings a copy of the plat Exhibit B., which was introduced in evidence at the trial, and also adding the following words: "Exhibit B., hereto attached, correctly delineates the meanderings of said Ely or Cedar Island lake, the outer meander line representing that marked upon the official plat and as shown by the field notes of said Howe, and the inner meander line representing the lake as it actually exists and as it did exist in 1876 when said field notes were made and filed. A portion of the land lying between said lines is the land involved in these actions."

2. That paragraph 11 of said findings of fact be amended by inserting in the second line thereof, after the word "lots," the following words, to-wit: "and all the surveyed lands within said township."

3. That paragraph 12 of said findings of fact be amended by striking out the words "and a few feet of lake frontage," found in lines 14 and 15 of said paragraph, and by inserting in lieu thereof the words "about one-third of a mile of lake frontage."

4. That said findings be further amended by adding thereto paragraph 13, as follows:

"13. That prior to the patenting of any of the lands in this

township, an affidavit made by one claiming to know the facts was forwarded through the receiver of the local land office and the surveyor general of Minnesota to the Commissioner of the General Land Office at Washington, wherein were various statements
121 tending to show that what purported to have been a survey of said township made by said Howe was, as to the northerly and westerly portions thereof and including the lands in question, false and fictitious; that transmitted therewith were two letters from said receiver of the local land office and one from the surveyor general of Minnesota, tending to discredit the affidavit in question, and to indicate that the statements therein made were based upon mistake; that at the time said affidavit and communications were transmitted, as aforesaid, the surveyor general of Minnesota proffered a request that a competent surveyor be employed to examine the surveys made by said Howe, including the lands in question; that upon consideration thereof, the Commissioner of the General Land Office declined to grant such request."

It is further ordered that, except as above granted, the said motion to amend the findings be and the same is hereby denied.

WM. A. CANT, *Judge.*

122 *Judgment.*

STATE OF MINNESOTA, }
County of St. Louis. }

District Court, Eleventh Judicial District.

SECURITY LAND & EXPLORATION COMPANY, Plaintiff, }
vs. }
G. A. BURNS and MARY L. BURNS, Defendants. }

The above entitled action having been duly brought on for trial in its regular order upon the calendar of the March, 1901, general term of the district court above named, on the second day of April, 1901, before the Honorable W. A. Cant, one of the judges of said court; without a jury; and said action having been tried together with another action entitled Security Land & Exploration Company, plaintiff, *vs.* Henry Weckey and Rosaline S. Weckey, and upon the same record, by stipulation of the parties thereto and by order of said court; and said judge having on the 4th day of September, 1901, duly made and filed his findings of fact and conclusions of law in said actions, and amendments thereto on December 3rd, 1901, wherein and whereby he ordered judgment in favor of the defendants in this action, and against the plaintiff, that the plaintiff take nothing in this action, and for their (said defendants') costs and disbursements herein;

Now, pursuant to said decision and order, upon motion of
123 R. R. Briggs, of counsel for said defendants, it is hereby adjudged and decreed that plaintiff take nothing in the above

entitled action, and that the defendants above named have and recover of and from said plaintiff the sum of $11.00, their costs and disbursements duly taxed and allowed in this action.

Witness the Honorable Wm. A. Cant, judge of the district court aforesaid, at Duluth, this 23 day of Dec. in the year of our Lord, 1901.

J. P. JOHNSON, *Clerk*,
By H. A. LIEDEL,
Deputy Clerk.

[SEAL.]

Judgment.

STATE OF MINNESOTA, }
County of St. Louis, }

District Court, Eleventh Judicial District.

SECURITY LAND & EXPLORATION COMPANY, Plaintiff, }
vs. }
HENRY WECKEY and ROSALINE WECKEY, Defendants. }

The above entitled action, having been duly brought on for trial in its regular order upon the calendar of the March, 1901, general term of the district court above named, on the 2nd day of April, 1901, before the Honorable W. A. Cant, one of the judges of said court; without a jury; and said action having been tried together with another action entitled Security Land & Exploration
124 Company, plaintiff, *vs.* G. A. Burns and Mary L. Burns, and upon the same record, by stipulation of the parties thereto and by order of said court; and said judge having on the 4th day of September, 1901, duly made and filed his findings of fact and conclusions of law in said actions and amendments thereto on December 3rd, 1901, wherein and whereby he ordered judgment in favor of the defendants in this action, and against the plaintiff, that the plaintiff take nothing in this action, and *and* for their (said defendants') costs and disbursements herein;

Now, pursuant to said decision and order, upon motion of R. R. Briggs, of counsel for said defendants, it is hereby adjudged and decreed that plaintiff take nothing in the above entitled action, and that the defendants above named have and recover of and from said plaintiff the sum of $11.00, their costs and disbursements duly taxed and allowed in this action.

Witness the Honorable Wm. A. Cant, judge of the district court aforesaid, at Duluth, this 23 day of Dec. in the year of our Lord 1901.

J. P. JOHNSON, *Clerk*,
By H. A. LIEDEL,
Deputy Clerk.

[SEAL.]

125 *Notice of Appeal.*

STATE OF MINNESOTA, }
County of St. Louis. }

District Court, Eleventh Judicial District.

SECURITY LAND & EXPLORATION COMPANY, Plaintiff, }
vs. }
G. A. BURNS and MARY L. BURNS, Defendants. }

To Wilson & Van Derlip and R. R. Briggs, attorneys for the above named defendants, and to J. P. Johnson, clerk of said district court:

Please take notice, that the above named plaintiff, Security Land and Exploration Company, appeals to the supreme court of the State of Minnesota, from the judgment of the said district court entered herein, on the 23rd day of December, A. D. 1901, and from the whole thereof.

Dated this 27th day of December, A. D. 1901.

BILLSON, CONGDON & DICKINSON AND
JOHN G. WILLIAMS, *Attorneys for Plaintiff.*

(Endorsed on back:) Due service of the within notice of appeal is hereby admitted at Duluth this 28th day of December, 1901. J. P. Johnson, clerk of district court, St. Louis county.

126 Due service of the within notice of appeal by copy is hereby admitted at Duluth, Minn., this 27th day of December, 1901.

WILSON & VAN DERLIP AND
R. R. BRIGGS,
Attorneys for Defendants.

Bond on appeal is hereby waived, December 27th, 1901.

WILSON & VAN DERLIP AND
R. R. BRIGGS,
Attorneys for Defendants.

Notice of Appeal.

STATE OF MINNESOTA, }
County of St. Louis. }

District Court, Eleventh Judicial District.

SECURITY LAND & EXPLORATION COMPANY, Plaintiff, }
vs.
HENRY WECKEY and ROSALINE WECKEY, Defendants. }

To Wilson & Van Derlip and R. R. Briggs, attorneys for the above-named defendants, and to J. P. Johnson, clerk of said district court:

Please take notice, that the above named plaintiff, Security Land and Exploration Company, appeals to the supreme court of
127 the State of Minnesota, from the judgment of the said district court entered herein, on the 23rd day of December, A. D. 1901, and from the whole thereof.

Dated this 27th day of December, A. D. 1901.

BILLSON, CONGDON & DICKINSON AND
JOHN G. WILLIAMS, *Attorneys for Plaintiff.*

(Endorsed on back.)

Due service of the within notice of appeal is hereby admitted at Duluth this 28th day of December, 1901.

J. P. JOHNSON,
Clerk of District Court, St. Louis County.

Due service of the within notice of appeal by copy is hereby admitted at Duluth, Minn., this 27th day of December, 1901.

WILSON & VAN DERLIP AND
R. R. BRIGGS,
Attorneys for Defendants.

Bond on appeal is hereby waived, December 27th, 1901.

WILSON & VAN DERLIP AND
R. R. BRIGGS,
Attorneys for Defendants.

128 (Endorsed:) 12912–12913. State of Minnesota supreme court. April term, A. D. 1902. Security Land and Exploration Company, appellant, *vs.* G. A. Burns and Mary L. Burns, respondents. Security Land and Exploration Company, appellant, *vs.* Henry Weckey and Rosaline S. Weckey, respondents. Paper book. Billson, Congdon & Dickinson and John G. Williams attorneys for appellant. Wilson & Van Derlip and R. R. Briggs, attorneys for respondents. Duluth. J. J. Le Tourneau & Co. 1902. Filed Mar. 5, 1902. Darius F. Reese, clerk.

129 12912–12913.

STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1902.

SECURITY LAND & EXPLORATION CO., Appellant,
vs.
G. A. BURNS and MARY L. BURNS, Respondents.
No. 94–95.
SECURITY LAND & EXPLORATION CO., Appellant,
vs.
HENRY WECKEY and ROSALINE WECKEY, Respondents.
Syllabus.

1. A meander line is not, as a general rule, a boundary line, yet the boundaries of fractional lots cannot be indefinitely extended where they appear by the Government plat to abut on a body of water which in fact never existed at substantially the place indicated on the plat. In such exceptional cases the supposed meander line will, if consistent with the other calls and distances indicated on the plat, mark the limits of the survey and be held to be the boundary line of the land it delimits.
2. Rule applied and held upon the special facts of this case that the trial court correctly held that a line on a Government plat purporting to be a meander line was intended to be the boundary line of the fractional lots here in question.

Judgments affirmed.

130 12912–12913.

STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1902.

SECURITY LAND & EXPLORATION COMPANY, Appellant,
vs.
G. A. BURNS and MARY L. BURNS, Respondents.
No. 94–95.
SECURITY LAND & EXPLORATION COMPANY, Appellant,
vs.
HENRY WECKEY and ROSALINE WECKEY, Respondents.
Opinion.

These are ejectment actions to recover possession of certain land in section four of township one hundred and fifty-seven, range seventeen, in the county of St. Louis, this State. The controverted ques-

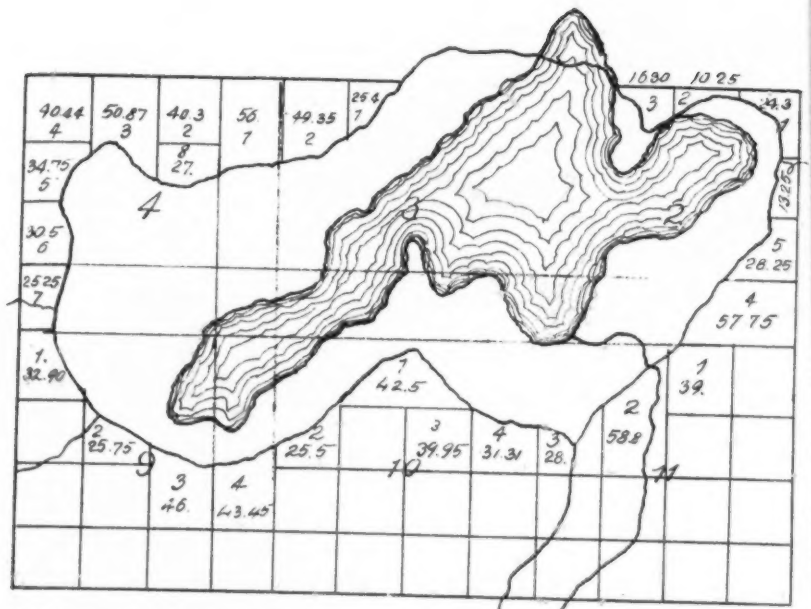
tions of law and fact are the same in each case and for this reason they were by stipulation heard together in the district court and in this court. The defendants in each case recovered a judgment in their favor in the district court, from which the plaintiff appealed. The here material facts as found by the trial court are substantially these: The township named was ordered surveyed by the General Land Office and the contract for the survey thereof awarded to H. S. Howe. He ran and marked the exterior lines of the
131 township except the south line thereof, which had been previously surveyed and set posts at all section and quarter section corners on the three exterior lines, and a meander post upon the north line of the township where the line running west from the northeast corner of the township first strikes the shore of a lake known as Ely or Cedar Island lake. He made no survey of the interior of the township and no section lines therein were ever run by him, and no section or quarter section corners were ever located or marked by him, with the possible exception of those in section thirty-six, and none of the streams or permanent lakes, of which there were several in the township, were meandered by him. He, however, made and filed with the U. S. surveyor general of the State of Minnesota what purported to be field notes of a survey of the township, purporting to give the length and directions of all interior section lines therein, the location of all section and quarter section posts, and the bearing trees thereof, the character of the soil and timber, and all other data and information required by the statutes of the United States and the rules of the General Land Office to be ascertained and reported by deputy surveyors in due course of making surveys of public lands. With the exception of the description of the survey of the three exterior boundary lines of the township actually run by him, the field notes returned by him were imaginary and fictitious, and were, in fact, false and erroneous.
132 From the purported field notes, it appeared that there existed in the northerly part of the township, lying in sections 2, 3, 4, 9, 10 and 11 thereof a lake known as Ely lake, or Cedar Island lake, with a surface area, as indicated by the field notes, of about eighteen hundred acres; in fact the lake then was and still is a body of water not exceeding eight hundred acres in area. It is a permanent, deep and navigable lake, having high, steep and heavily timbered banks, except about the outlet thereof. It does not, in fact, touch section 11 at all, and covers only an area of very small extent, (less than one half of a forty acre tract), in the southeast corner of section 4. Between the actual water line of the lake and the meander line thereof, as returned by the purported field notes, there were at the time of the survey, and still are, at least one thousand acres of high, tillable land, which has never been a part of the lake, and which was and is heavily timbered with trees of more than a century's growth and growing down to the water's edge. The field notes and report of survey so made was duly approved and a plat of the town-

ship made in accordance therewith which was accepted and approved by the General Land Office as the official plat of the township. No other survey and plat of the township were ever made. The actual shore line of the lake as it was at the time the supposed survey was made, and now is, and the meander line as marked on the official plat, and the location of
133 the fractional lots, with reference to such lines, their area and side lines are correctly delineated on the following map:

(Here follows diagram marked p. 133.)

No 127
D. L. & B. Co. } p. 133
Taurus

Exhibit B



Sections 2 3 4 9 10 & 11 Town No 57. Range 17.
St Louis County, Minnesota.

82

134 The outer meander line on this map represents the one marked on the official plat as shown by the field notes of the surveyor and the inner meander line represents the lake as it actually exists and did exist when the field notes were made and filed. The land involved in these actions lies between those lines and is and has been since 1892 in the possession and actual occupancy of the defendants, who have made permanent and valuable improvements thereon and claim that it is subject to homestead entry. Between December 1879 and March 1887, all of the lots here in question were patented and conveyed by the United States, pursuant to the laws relating to the disposal of public lands and by patents containing the usual clause, "according to the official plat of the survey of said lands returned to the General Land Office by the surveyor general." By divers mesne conveyances from the patentees, the title to lots 3, 5, 6, and 7, containing according to the plat and to the patents therefor the following quantities of land, respectively: Lot 3, 50.37 acres; lot 5, 64.75 acres; lot 6, 30.5 acres; and lot 7, 25.25 acres; became vested in the plaintiff in the year 1891 and prior to the commencement of these actions; and the plaintiff is still the owner thereof, and as such owner, has within the boundaries of the lots, as shown upon the plat, and within the meander line of the lake described in the field-notes, the full quantity of land
135 above described as contained therein. The title to the Government lots one and eight (which are the only lots in the east half of section 4 apparently bounded by the lakes) was conveyed by Government to certain patentees, and the patent title thereafter became vested in Simon J. Murphy and others, by whom a quit-claim deed was executed and delivered to the plaintiff prior to the commencement of these actions, purporting to grant and quit-claim to the plaintiff that part of the southeast quarter of section four lying southerly and westerly of a line drawn from the center of the section to the southeast corner thereof, and also all the interest of the grantors, in the west half of the section. At the same time, the plaintiff executed and delivered to Mr. Murphy and others a quit-claim deed purporting to convey to them that part of the east half of section 4 lying northerly and easterly of a line drawn from the center of the section to the southeast corner thereof.

The trial court found as a conclusion of law that, the plaintiff is the owner of Government lots three, five six and seven in section four of township fifty-seven north of range seventeen west, in St. Louis county, Minnesota, and that the pretended meander line of the lake, as the same is described in the purported field-notes of the surveyor and as delineated upon the plat, is the boundary line of the land owned by plaintiff in such lots. And further, the defendants are not, nor is either of them in possession of any part
136 of the land in section four belonging to the plaintiff; nor do the defendants, or either of them, withhold from the plaintiff any land of which it is the owner or to the possession of which it is entitled.

Do the facts found by the court sustain this conclusion? The

claim of the plaintiff is, that all patentees of lots which by the Government plat were shown to abut upon the lake took their respective titles by reference to the plat and thereby acquired not only each as against the Government, but each as against the other, the right to a frontage upon the lake. That in the direction of the lake each of these lots has only one boundary, the lake itself, and that the meander line is not a boundary line for any purpose. In support of this claim counsel invokes the well settled general rule that a meander line is not a boundary line but that the water whose body is meandered is the true boundary, whether or not the meander line in fact coincides with the shore line for the latter being a natural monument must control courses and distances. The first and leading case in this court upon this question is that of Schurmeier *v.* Railway Co., 10 Minn. 82, which involved simply a question of riparian rights. In that case the meander line was actually run along the Mississippi river, and was substantially the same as the shore line thereof. The land in dispute was a sand-bar island lying in the river and the controversy, was, whether a fractional Government lot confessedly bounded by the river stopped at the
137 water's edge or extended to the navigable waters of the stream so as to include the island. The fact that plaintiff was a riparian owner was conceded, and only the extent of his riparian privileges and estate was in controversy. The contention was made that the meander posts on the bank marked the boundary of the land owner, but the court held that the river and not the meander line was the boundary line of the lot, and that the patentee thereof took title to the land between the meander line and low water mark in the river, which included the island in question. The case was affirmed by the Supreme Court of the United States, 7 Wall. 272.

In Everson *v.* City of Waseca, 44 Minn. 247, the meander line and the actual shore line of Loon lake in Waseca were not at all points coincident. Fractional Government lot two was delineated as lying on the south side of and as bounded by the lake, but the meander line at this point was, in fact, run some distance from the shore of the lake leaving a tract or point of several acres of dry land between it and the shore. It was held following the Schurmeier case, that the patentee of lot two took title to such point.

The case of Lamprey *et al. v.* State *et al.*, 52 Minn. 181, was one involving a question of riparian rights only for the meander line, and the actual shore line of the lake meandered were substan-
138 tially the same at the time the survey was made. The lake in question was a shallow and non-navigable one comprising about three hundred acres and after the survey and before the litigation arose the waters of the lake gradually receded and the lake had practically ceased to exist. Thereupon the Land Department of the United States caused a survey to be made of the former bed of the lake and issued patents therefor. The plaintiffs claimed title thereto by virtue of their ownership of the land abutting on the lake when the original survey was made. The defendants claimed that the patent according to the original survey through which

plaintiffs claimed title to the former bed of the lake only conveyed the land to the margin of the lake as it existed when the survey was made. Hence there was no question in that case as to any discrepancy between the meander line and the actual shore line of the lake, but as said by the court, the question was: What rights in or to the soil under water does the patentee of land bounded by a meandered inland lake acquire by his patent? The court held that such patentee took title to the center of the lake and therefore the subsequent patent was void.

In Olson *v.* Thorndike, 76 Minn. 399, the meander line purported to coincide with the bank of the Minnesota river, but in fact it did not do so and a point of land 51 rods long by 26 rods wide at one end running to a point at the other end lay between the meander line and the river. This court held, following the Schurmeier
139 case, that the point of land lying outside of the meander line was a part of the fractional lot which abutted on the river according to the official plat. The court, however, in its opinion said: "There may be cases in which the error in the Government survey is so gross that the purchaser of the fractional, or supposed fractional, subdivision of Government land will not take to the shore of the stream or lake, although the plat of the subdivision calls for such shore as one of the boundaries. It was held that Whitney *v.* Detroit Lumber Co., 78 Wis. 240, presented such a case. That case is cited in Lamprey *v.* Mead, 54 Minn. 290. But there is nothing in the record from which it can be held that this is such a case."

In the cases of Hardin *v.* Jordan, 140 U. S. 371, and Mitchell *v.* Small, 140 U. S. 406, the general rule announced in the Schurmeier case was followed. But in those cases as well as in the cases in this court to which we have referred there was in fact a stream or lake to be meandered and the shore line of the body of water and the meander line substantially coincided except where tongues or points of land extended out into the body of water beyond the meander line, or the waters had receded and the question was one of riparian rights strictly. No such questions are involved in this case for the question here is as to the boundaries of the fractional lots owned by the plaintiffs. If in this case there was in fact or ever had been a lake
140 upon which any part of the several fractional lots abutted the general rule would apply and their boundary would be the lake. But such is not this case for there was in fact *no lake at or within any reasonable distance of the meandered line or any part thereof and never had been*, to which the meander line might be found referable. It also appears from the court's findings of fact and Exhibit "B" that the side lines of some of the lots would have to be extended from one-half to one mile to reach the lake, that as to others, if their side lines were extended at right angles they would miss the lake entirely, and that if the side lines of all of the fractional lots were so extended they would overlap each other in inextricable confusion. And further, that if the

so-called meander line be accepted as a boundary line it will give to the patentees or their grantees the full quantity of land bought and paid for by them, but if they are permitted to extend their lot lines through the adjacent forest to the lake they will obtain more than three times as much land as they purchased and paid for. In short, this is not a case where the surveyor in running a meander line has made a fair and honest attempt to follow the sinuosities of the shore line of an actual body of water and by exclusion or inclusions of irregularities of contour has produced an average and approximately correct result, but one where the existence at any time of a lake upon which any part of the fractional lots in question could
141 abut is a pure fiction. Such being the case it is not within the general rule as to meander lines for the far away lake is an impossible boundary for all of the lots in question and could never have been intended by the Government and the patentees as the boundary of the lots. The official plat was only intended to be a picture of the actual conditions on the ground, but the fraudulent mistake in the plat in this case was so gross that no man actually viewing the premises could possibly be misled or believe that the shore line of the lake was intended as the boundary line of the lots. He would understand at once that the meander line as traced on the plat was the actual boundary line of the lots. This case then is one where the call for the natural monument, the lake, must be disregarded for the admitted facts show that it is an impossible call, and that if it is rejected the courses and distances and the meander line will exactly close and give to the plaintiff the precise quantity of land bought from the Government and paid for. It falls within the rule, that, a meander line is not, as a general proposition, a boundary line, yet the boundaries of fractional lots will not be indefinitely extended where they appear by the Government plat to abut on a body of water which in fact has never existed at substantially the place indicated on the plat. In such exceptional cases, the supposed meander line will, if consistent with the other calls and distances indicated on the plat, mark the limits of the
142 survey and be held to be the boundary line of the land it delimits.

Horne *v.* Smith, 159 U. S. 40;
Niles *v.* Cedar Point Club, 175 U. S. 300;
Fuller *v.* Shedd, 161 Ill. 462;
Whitney *v.* Detroit Lumber Co., 78 Wis. 240;
Grant *v.* Hemphill, 29 Iowa 218;
French Live Stock Co. *v.* Springer, 35 Or. 312.

The last case cited was affirmed in the Supreme Court of the United States and its decision in that case seems to conclusively establish the rule we have stated. In that case the Government plat showed that the fractional lots in question were bounded on the north by the meander line of Malheur lake. The land in controversy lay outside the meander line but adjoined the lots. The plaintiff claimed that the lake, at the time of the survey and for

some years thereafter, was a continuous body of water up to the meander line, but that from year to year for some time its waters receded leaving the disputed land bare. The defendant introduced evidence tending to show that there never was a lake in front of the lots; that Malheur lake was a well defined body of water lying northeasterly from the lots; that, if the lines of the lots were extended north indefinitely, they would never intersect the lake; that the lake never extended to the supposed meander line, and that there had never been any recession of the waters, so as to constitute the land in controversy reliction in front of the lots. The
143 questions of fact so presented were tried and found in favor of the defendant and, upon plaintiff's appeal, the supreme court of Oregon in affirming the decision of the trial court said: "The real question of cardinal and pivotal concern arises upon the urgent and strong contention and argument of counsel for plaintiff that the official survey of the lake, the approval thereof, and the official plats and maps made thereunder, showing the lake and the meander line thereof, conclusively establish the fact and location of the lake, so far as the rights of riparian grantees are concerned; and the Government and its grantees are estopped to deny the supposed fact as represented to the purchasers of abutting land. * * * If there never was a lake in front of plaintiff's lots, or if one did not exist there at the time of the survey, then there was no natural object or monument marking the north boundary of said lots; hence resort must be had to the secondary evidence, viz., the courses and distances which are ascertainable from the plats and surveys, and they must prevail. The result is natural, and the land conveyed would be just what a mathematical calculation would produce from the field notes of the survey of the fractional sections and the supposed meander line * * *." The cause was brought into the Supreme Court of the United States by writ of error sued out by the plaintiff and he there cited in his brief
144 Murphy *v.* Kirnan, 103 Fed. 104 and urged, among others, this point: "The patents in this instance, on their face and when read in connection with the plats, conveyed all the public lands up to the line of Lake Malheur; if, by reason of any error or fraud, the survey improperly included or omitted any public land, then the obviously proper mode of correction was a bill in equity putting directly in issue the supposed error or fraud. To allow the apparent purpose and legal effect of the patents to be defeated upon proof of error in the plats, does not differ, in principal or practical result, from canceling the patents in a suit at law." The court however affirmed the decision of the State court and in doing so said: "If, indeed, there had been a lake in front of these lots at the time of the survey, which lake had subsequently receded from the platted meander line, the claim of the owner of the lots to the increment thus occasioned might be conceded to be good, if such were the law of the State in which the lands were situated. But if there never was such a lake—no water forming an actual and visible boundary—on the north end of the lots, it would seem unreasonable, either

to prolong the side lines of the survey indefinitely until a lake should be found, or to change the situs of the lots laterally in order to adapt it to a neighboring lake. The jury having found that the facts under this issue were as claimed by the defendant in error, the conclusion must be that the rights of the plaintiff in error
145 must be regarded as existing within the actual lines and distances laid down in the survey and to the extent of the acreage called for in the patents, and that the meander line was intended to be the boundary line of the fractional section."

French-Glenn Live Stock Co. *v.* Springer, 22 Sup. Ct. Rep. 563.

Our conclusion is that the trial court in this case was correct in holding that the boundary line of the plaintiff's lots was the line appearing on the Government plat as a meander line.

Judgments affirmed.

START, *C. J.*

146 (Endorsement:) No. 12912–12913 State of Minnesota, supreme court. Security Land & Exp. Co. appellant *vs.* G. A. Burns *et al.* Henry Weckey *et al.* respondents. 2 cases. Opinion and syllabus. Filed July 11 1902 D. F. Reese clerk. April term, A. D. 1902 Start C. J.

147 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1902.

SECURITY LAND AND EXPLORATION COMPANY, Appellant,
vs.
C. A. BURNS and MARY L. BURNS, Respondents. } No. 94.

Pursuant to an order of court duly made and entered in this cause, on the 22nd day of July A. D. 1902

It is here and hereby determined and adjudged that the judgment of the court below, herein appealed from, to wit, of the district court of the eleventh judicial district, sitting within and for the county of St. Louis be and the same hereby is in all things affirmed. And it is further determined and adjudged that the respondents above named, do have and recover of said Security Land and Exploration Company appellant herein the sum and amount of one hundred twenty-one and 35–100 dollars ($121.25) and costs and disbursements in this cause in this court, and that said respondents have execution for the enforcement thereof.

Dated and signed this 22nd day of July A. D. 1902

By the court,

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

Statement for Judgment.

Costs allowed by statute	$25.00
Clerk's fees, for making return	
Printer's fees	86.60
Clerk's fees, supreme court	9.50
Filing mandate	
Affidavits and acknowledgments	.25
Postage	
	$121.35

148 [Endorsed:] 12912 State of Minnesota, supreme court. Security Land and Exploration Company appellant *vs.* C. A. Burns, *et al.* respondents Transcript of judgment. Filed July 22 A. D. 1902 D. F. Reese clerk.

STATE OF MINNESOTA, *Supreme Court,* } ss:

I, D. F. Reese, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the entry of judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom.

Witness my hand and the seal of said supreme court at the capitol, in the city of St. Paul, this 22nd day of July A. D. 1902.

D. F. REESE, *Clerk.*

149 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1902.

SECURITY LAND AND EXPLORATION COMPANY, Appellant, *vs.* G. A. BURNS and MARY L. BURNS, Respondents.	No. 94. Appeal from District Court, Eleventh Judicial District, County of St. Louis.

This cause having been duly argued and submitted at the general April term of this court, A. D. 1902, upon the return to the appeal herein.

Now after full and mature deliberation had thereon, it is here and hereby ordered that the judgment of the court below, herein appealed from, be and the same hereby is, in all things affirmed and that the respondents above named have judgment accordingly.

Entered July 22nd A. D. 1902.

By the court.

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

I hereby certify that the foregoing is a full and true copy of the original order for judgment entered in the above entitled cause.

Attest: D. F. REESE, *Clerk.*

150 [Endorsed:] No. 12912. State of Minnesota, supreme court. Copy of order for judgment. Filed July 22 A. D. 1902 D. F. Reese, clerk.

151 STATE OF MINNESOTA:

Supreme Court, General April Term, A. D. 1902.

TUESDAY MORNING, 9:30 O'CLOCK, *May* 6, *A. D.* 1902.

Court convened pursuant to adjournment. All the justices being present.

SECURITY LAND AND EXPLORATION COMPANY, Appellant, *vs.* G. A. BURNS and MARY L. BURNS, Respondents. } Cal No. 94. Reg. No. 12912.

This cause came on to be heard this day upon the return to the appeal herein.

Thereupon the same was argued by counsel, submitted to the court for decision and taken under advisement.

A true record.

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

The foregoing is a full and true copy of the minutes of argument in the above entitled cause.

Attest: D. F. REESE, *Clerk.*

152 [Endorsed:] 12912. State of Minnesota, supreme court. Copy of minutes of argument. Filed July 22, A. D. 1902. D. F. Reese, clerk.

153 [Endorsed:] No. 12912. State of Minnesota, supreme court. Security Land & Exploration Company, appellant, against C. A. Burns and Mary L. Burns, respondents. Judgment roll. Filed July 22nd, 1902. D. F. Reese, clerk.

154 State of Minnesota, Supreme Court.

STATE OF MINNESOTA, }
Office of Clerk of the Supreme Court, } ss:

I, D. F. Reese, clerk of the supreme court of the State of Minnesota, do hereby certify and return to the Supreme Court of the United States, that the foregoing and annexed transcript of record is a full and complete transcript of the return of the clerk of the district court on appeal to the Minnesota State supreme court, assignments of error in State of Minnesota supreme court, judgment, judgment roll, stipulation of substitution of attorneys, stipulation as to hearing of cause and opinion of the Minnesota State supreme court, had in the case of Security Land and Exploration Company, appellant and plaintiff in error, against G. A. Burns and Mary L. Burns, respondents and defendants in error, as appears from the original files and records of the supreme court of the State of Minnesota.

And I do further certify and return that I have annexed to said transcript and included therewith a copy of the petition for writ of error and of the stipulation waiving the bond on the writ of error and the assignments of error in the United States Supreme Court as the same remain on file and of record in the said supreme court of the State of Minnesota, and the original writ of error from the Supreme Court of the United States and the original citation issued thereon, with admission of service thereof, and that the foregoing constitutes a true and complete return to said writ of error.

Seal of the Supreme Court, State of Minnesota.

In witness whereof, I have hereunto set my hand and the seal of said supreme court of the State of Minnesota, at the capitol, at Saint Paul, Minnesota, this 25th day of August, A. D. 1902.

D. F. REESE,
Clerk of the Supreme Court of the State of Minnesota.
By J. L. HELM,
Deputy Clerk.

Endorsed on cover: File No. 18659. Minnesota supreme court. Term No. 127. The Security Land and Exploration Company, plaintiff in error, *vs.* G. A. Burns and Mary L. Burns. Filed September 5, 1902.

SYNOPSIS OF ARGUMENT.

1. The supremacy of monuments over courses, distances and quantities is an universal rule of interpretation. (19-36).
2. The rule could not be otherwise than universal, in view of its reason. (36-58).
3. The degeneration of the rule in particular jurisdictions. (58-64).
4. It is only through reformation in equity, if at all, that extreme discrepancies can be corrected. (65-70).
5. All the foregoing propositions are established by the very terms of the statute regulating Federal surveys. (70-73).
6. The equities of the case. (74-79).
7. Plaintiff is not chargeable with notice of the surveyor's dereliction, nor if it were, would its rights be impaired. (79-81).
8. The overlapping of lots as extended to the actual lake shore is no concern of defendants, nor is it legally important. (81-86).
9. Supremacy of the monuments called for, is not impaired by failure of surveyor to make actual measurements. (86-93).
10. Meander lines in their relation to the rule of monumental supremacy. (93-115).
11. Review of defendants' meander line citations. (115-138).
12. Jurisdiction to review the judgment. (138).

11510

SUPREME COURT
OF THE UNITED STATES.

OCTOBER TERM A. D. 1903.

No. 127.

SECURITY LAND & EXPLORATION COMPANY,
PLAINTIFF IN ERROR,
AGAINST
G. A. BURNS AND
MARY L. BURNS,
DEFENDANTS IN ERROR.

ERROR TO SUPREME COURT OF MINNESOTA.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF CASE.

The action, which in the nature of ejectment, was brought in the District Court for the Eleventh Judicial District of Minnesota, where, after trial upon the

merits, a judgment was rendered in favor of the defendants. Upon appeal, the judgment was affirmed by the Supreme Court of the State. It is here, on writ of error to that court, as involving the construction of an United States survey and patent, and as presenting for review a decision against a right and title set up by plaintiff, under a statute of the United States, and an authority or commission exercised under the United States.

The action was brought to recover possession of the lands situate in St. Louis County, Minnesota, described as "all those portions of lots three, five, six and seven in Section four (4), Township fifty-seven (57) North, of Range seventeen (17) West, according to the Government Survey thereof, in said County and State, which lie west of a line drawn north and south through the center of said Section four." (P. 8 of Record).

The defendants by their answer denied that the land of which they were in possession in the west half of Section four, constituted any part of the plaintiff's lots 3, 5, 6 and 7, and alleged it to be a strip of unsurveyed public land, adjacent to the plaintiff's lots. (P. 9 of Record).

Upon the trial it appeared that the defendants were in possession, under a claim of right to enter the lands under the homestead law. (P. 58 of Record).

It was found by the trial court, that "between December, 1879, and March, 1887, all of said govern-

ment lots were patented and conveyed by the United States, pursuant to the laws relating to the disposal of public lands, and by patents containing the usual clause, describing the lands, *'according to the official plat of the survey of said lands returned to the General Land Office by the surveyor general;'* and that by divers mesne conveyances from said patentees, the title to said lots 3, 5, 6 and 7 * * * because vested in the plaintiff in the year 1891." (Finding 11, p. 58 of Record).

It was also found, that according to the field notes of the surveyor, and the official plat of the survey returned to the general land office by the surveyor general, plaintiff's lot 3 extended from the north line of the section and township, southerly to Cedar Island Lake, and that plaintiff's lots 5, 6 and 7, each extended from the west line of the section, easterly to the lake. (Finding 8, p. 58 of Record and Exhibit A, p. 72).

It was also found, that in his field notes on the external lines of this section four, the surveyor made, in two instances, erroneous or false report of the distance between a section corner and the lake. The lake intersects at one point, the south line of the section, and at another, the east line; extending thence in an easterly direction. In his notes of the survey of the south line of the section, which is also the south line of plaintiff's lot seven, the surveyor stated the distance from the southwest corner of the section, east-

erly to the point where the south line is intersected by the west shore of the lake, as 12.10 chains, (p. 35 of Record); and in his notes of the survey of the east line of the section, he stated the distance from the northeast corner of the section, southerly, to the point where the east line is intersected by the north shore of the lake, as 26.10 chains, (p. 32 of Record).

Between each of these section corners and the lake, the actual distance is much greater than thus reported. Just how great the discrepancy is, was not found by the trial court in chains and links; but by reference to the court's twelfth finding of fact, where the extent of the discrepancy is found in terms of acreage, (pp. 59 and 60 of Record), and to the diagram Exhibit B, which the court attached to its findings as being drawn upon a scale, and as correctly delineating the shore of the lake both as it was shown upon the government plat, and as it actually existed, (pp. 58, 72½, 73 and 75 of Record), it sufficiently appears that the length of the south line was understated to the extent of about 48 chains, and that of the east line, to the extent of about 39 chains.

With reference to the length of each of these lines,—the south line and the east line of this fractional section, the calls for distance and monuments respectively, were therefore widely discrepant; and it became necessary to determine, as between the call for distance, and the call for the lake as a natural monu-

ment, which should prevail. If distance is to prevail, then the land in controversy is an unsurveyed strip lying between the plaintiff's lots and the lake; if the natural monument is to prevail, then the strip of land in controversy is part and parcel of plaintiff's lots.

As will be seen by reference to page 36 of Record, the surveyor, according to his field notes, in tracing the meander of Cedar Island Lake, began at its point of intersection with the north line of the township, in Section 3, traced the lake shore southwesterly across that fractional section to the post which he reported having placed where the lake shore was intersected by the line running south between sections 3 and 4, (p. 32 of Record), then by specified courses and distances, across section 4, to the post which he reported having set at the point where the shore was intersected by the line running east between sections 4 and 9. (P. 35 of Record). These reports by the surveyor of the courses *along* the lake as a natural monument, thus present a question which is the exact counterpart of that already noticed with reference to his reported courses and distances along the section lines *to* the lake as a monument. As against the natural monument, the one set of courses and distances can claim neither more nor less validity than the other.

As bearing mainly upon the origin of the discrepancy, findings were also made to the effect following:

That in 1876 one H. S. Howe, having been con-

stituted a deputy United States surveyor for that purpose, duly entered into a contract for the survey of the township in question, to-wit, Township fifty-seven North, of Range seventeen West, the southerly line of which township had been duly run in the course of a previous survey; that thereafter said Howe ran and marked the other exterior lines of said township, to-wit, the easterly, northerly and westerly lines thereof, and set posts at all section and quarter section corners on said three exterior lines, and also set a meander post upon the north line of the township as surveyed by him, where said line running west from the northeast corner of the township first encountered the shore of Cedar Island Lake, which is also called Ely Lake, (pp. 56, 57 of Record). That no survey of the interior of said township was ever made, and no section lines in the interior of the township were ever run by said Howe, with the possible exception of the west line of said Section 36, and no section or quarter section corners in the interior of the township were ever located, with the possible exception of the northwest corner of Section 36, and that no streams or lakes within the township were meandered by him. (Finding 4, p. 57).

That said Howe nevertheless filed with the surveyor general what purported to be field notes of the survey of the township, purporting to give all the details usually appearing in notes of that character; all

of which field notes, however, except those relating to the three above mentioned exterior boundary lines of the township were fictitious. (Finding 5, p. 57).

That from the field notes returned by said deputy surveyor, a plat of the township was made by the surveyor general, duly certified copies of which were forwarded to the General Land Office of the United States and the Local Land Office at Duluth, the same being the only plat ever made of the township, and the plat, by reference to which, all the lands in the township have been sold. A true copy of the plat is annexed to the court's findings, and will be seen at page 72½ of the printed record. (Finding 8, p. 58).

That the other section lines in the township intersecting the shores of Cedar Island Lake are four in number, to-wit: The east and the west lines of Section 10, the north line of Section 11 and the north line of Section 3, the length of each of which lines to the point of its intersection with the lake, was similarly, though not quite so largely understated in the field notes of the surveyor and upon the plat, thus presenting in other sections, questions similar to those arising with reference to Section 4, and thus exaggerating the lake, which had an actual area of about eight hundred acres, so as to give it an apparent area of about eighteen hundred. (Findings 7 and 8, pp. 57 and 58; and see diagram "Exhibit B," pp. 58 and 72 3-4).

The court attached to its findings a diagram, "Exhibit B," as correctly delineating the shores of the lake, both as they actually existed and as they were reported by the surveyor. (Pp. 58 and 72 3-4 of Record). A copy of this exhibit will also be found on the opposite page of this brief.

By its twelfth finding of fact, the court found in detail the acreage of the several lots in Section 4 treated as extending to the actual shore of the lake, and described the manner in which the several lots so extended would conflict with one another.

The court also found, that prior to the patenting of any of the lands in this township, the Commissioner of the General Land Office was advised by affidavit of one claiming to know the facts, that the alleged survey by Howe of these lands was fictitious, but declined to investigate the matter as proposed by the Surveyor General for Minnesota. (Finding 13, p. 60 of Record, and see pages 45-49, where the testimony on the subject will be found).

The findings can be seen in full at pages 56-60 of the Record. The stipulations of fact and testimony upon which they were based appear in full in the Record, pp. 12-55.

Although as noticed, the lots of complainant were by the official plat and the field notes shown to abut upon Cedar Island Lake as a natural monument, the lower courts disposed of the case by cutting off the

lots at points more than half a mile distant from the lake, on the ground that although the surveyor's reports of courses and distances were found to be mere fabrications or estimates, they were yet to be accepted as the more certain and reliable elements in the description of the lots.

It also appeared and was found, that between the complainant and the owners of lots 1 and 8 in Section 4, quitclaim deeds had been exchanged, whereby the dividing line between them, across the belt of land lying between the lake and the so-called meander line, had been fixed by drawing a diagonal line from the center of Section 4 to its southeasterly corner. (Record p. 15).

In the trial court and also in the Supreme Court of Minnesota, the case was, by stipulation, heard jointly with another similar action brought by the same plaintiff against one Henry Weckey, et al., involving issues identical in character, representing that part of the southeast quarter of Section 4 lying southwest of the above mentioned diagonal line of partition. In this court, in lieu of a joint hearing of the two cases, a stipulation has been filed that the same judgment that may be rendered in this cause shall be entered in the case against Weckey, which stands as No. 128 upon this term's calendar.

As the assignments of error serve only to present in their various aspects the general questions of law

underlying the controversy, a detailed discussion of the several assignments appears to be unnecessary. Assignments 1, 2 and 3, relate to the reception, against the objections of plaintiff, of testimony tending to show the absence of actual survey, and the magnitude of the discrepancy in acreage, thus raising the question of the relevancy of those facts.

Assignments 4 and 5 present through similar objections, the question of the relevancy of the fact that the defendants claim as settlers under the homestead law.

Assignments 6, 7 and 8 similarly present the question of the relevancy of the action taken by the Interior Department looking toward a re-survey of the lands in controversy.

Assignments 9 and 10, if the facts to which they refer are deemed legally material, are determinable by inspection of exhibit "B," p. 58 and 72 3-4. of record.

Assignments 11, 12 and 13 involve the accuracy of the court's legal conclusion that the lake, as a monument or boundary of the plaintiff's lots, as shown by the plat, and by the field notes of the east and south lines of the section, and of the meander line, should be rejected in favor of the courses and distances of the field notes.

ASSIGNMENTS OF ERROR.

The court below erred:

(1) In overruling the plaintiff's objection to that part of the second paragraph of the stipulation commencing with the words "but no evidence has ever been found," as incompetent, irrelevant and immaterial, and as not admissible under the pleadings. (Fols. 18, 10).

(2) In overruling the plaintiff's objections to that portion of paragraph 3 of the stipulation which had not been offered by the plaintiff, commencing with the words "there is no evidence that," as incompetent, irrevelant, immaterial and not admissible under the pleadings. (Fols. 19, 20, 11).

(3) In overruling the plaintiff's objections to the 5th numbered paragraph of the stipulation as incompetent, irrevelant, immaterial and inadmissible under the pleadings. (Fols 19, 11).

(4) In overruling the plaintiff's objections to the 6th paragraph of the stipulation, as being incompetent, irrevelant, immaterial and inadmissible under the pleadings. (Fols. 19, 12).

(5) In overruling the plaintiff's objections, upon the same grounds, to the 12th paragraph of the stipulation. (Fols. 20, 16).

(6) In overruling the plaintiff's objections, upon the same grounds, to the certified copy of the decision of the Secretary of the Interior of January 19, 1895. (Fols. 20, 70-78).

(7) In overruling the plaintiff's objections, upon

the same grounds, to the copy of the order from the Commissioner of the General Land Office, dated October 31, 1895, directing the Surveyor General to make a contract for the survey of these lands. (Fols. 21, 78-82).

(8) In overruling the plaintiff's objections, upon the same grounds, to the stipulation of admission, that pursuant to the directions of the Secretary of the Interior a hearing was had before the Surveyor General of Minnesota, of which hearing the plaintiff had notice and at which it appeared by counsel and objected to the hearing, for want of jurisdiction in the General Land Office, and that plaintiff took no further part in that hearing, and that the plaintiff had notice of the further proceedings leading up to the order for the survey shown in defendants' Exhibit "2." (Fol. 21).

(9) In finding that the side lines of lot one extended southerly to Ely Lake would appropriate substantially all the frontage of said lake within said section. (Fol. 89).

(10) In finding that if the side lines of lot 7 were extended easterly only a few feet of l ake frontage would be contained in said lot. (Fol. 91).

(11) In its conclusion of law that the pretended meander line of Ely or Cedar Island Lake as the same is described in the purported field notes, and as delineated upon the Government plat is the boundary line of the land owned by plaintiff in lots 3, 5, 6 and 7 in Section 4, Township 57, Range 17. (Fol. 92).

(12) In its conclusion of law that the defendants are not in possession of any part of the land in said Section four belonging to the plaintiffs and do not withhold from the plaintiff any land of which it is the owner or to the possession of which it is entitled. (Fol. 93).

(13) In its conclusion of law that the defendants are entitled to judgment, that plaintiff take nothing in said action, and for their costs and disbursements. (Fol. 93).

BRIEF FOR PLAINTIFF IN ERROR.

The case is governed by the elementary rule that monuments prevail over courses, distances and quantities.

Of the official township plat, by reference to which each of plaintiff's lots 3, 5, 6 and 7 were patented, (Finding 11, p. 58 of Record) a blue print copy is to be seen in the record as "Exhibit A," page 72. It delineates lot 3 as bounded on the north by the blazed north line of the township, and on the south by Cedar Island Lake; and lots 5, 6 and 7 as severally bounded on the west by the west line of Section 4, and on the east by Cedar Island Lake. This adoption by the surveyor of the lake as a boundary, converts it into a natural monument of his survey.

Grier vs. Penna. Coal Co., 128 Pa. St., 79, 95.

That the lake is the boundary of these lots, and is utilized as a monument by the surveyor, is with like distinctness, indicated by his field notes, already referred to in the foregoing statement, relating to the east line and south line of Section 4, and relating to the survey of the meanders of Cedar Island Lake, all

of which field notes are referred to upon the face of the plat as the same was certified by the Surveyor General to the General Land Office and the Local Land Office at Duluth, pursuant to the requirements of law. By statute the surveyor was bound to note the location of the lake as "a watercourse over which his lines would pass;" and by regulation he was required to record the meanderings of its shores.

Rev. Stats. Sec. 2396;
"Public Domain," A. D., 1883, pp. 598, 604-5.

"It is a well settled principle that when lands are granted according to an official plat of the survey of such lands, the plat itself, *with all its notes, lines, descriptions and land marks,* becomes as much a part of the grant or deed by which they are conveyed, and controls, so far as limits are concerned, as if such descriptive features were written out upon the face of the deed or the grant itself."

Cragin vs. Powell, 128 U. S.
Noonan vs. Lee, 2 Black, 499, 504.
Hardin vs. Jordan, 140 U. S., 371, 380.
County of St. Clair vs. Lovingston, 23 Wall, 46, 63.

"Where a survey and patent show a river to be one of the boundaries of the tract, it is a legal deduction that there is no vacant land left for ap-

propriation between the river and the river boundary of such tract."

County of St. Clair vs. Lovingston, 23 Wall, 46, 63.

"From data furnished by the surveyor the plats are prepared. One of the objects of the manual and law was to simplify the mode of disposing of the public lands, so that, without cumbering patents with descriptive field notes, the plats of the surveys should afford all necessary information to purchasers, and at the same time afford a convenient and certain description, by reference, of the land conveyed; and these official plats are made the basis of all sales and selections of public lands and are solely referred to in the usual patents to show what lands are patented."

Chapman vs. Polack, (Cal.) 11 Pac. Rep., 764.

"The map may be regarded as a daguerreotype of the land which the grantor intended to convey."

Vance vs. Fore, 24 Cal., 436.

In *Jeffcries vs. East Omaha Land Co.*, 134 U. S., 178, 194-5, in which it was held by the court, largely by force of the indications of the official plat, that a patent of a government lot shown by the plat to abut upon navigable water would pass accretions which had

formed between the date of the survey and the date of the patent, it was said:

> "The plaintiff on the other hand contends that the description in the patent of the land as lot 4, in effect made the river the boundary on the north, and passed the title of the United States to any new land that might have been formed before that time . . . The plat, of which a copy is annexed to the bill and marked "A," shows the Missouri River as the north boundary of lot 4 . . . No provision was made for running the north boundary of lot 4, but the river formed such north boundary without the running of any line there . . . In the present case the plat was made in accordance with the statute, showing the river as the northern boundary of fractional Section 21, and of lot 4 therein; and as the patent referred to the official plat of the survey, and thus made that a part of the description of lot 4, that description made the river the boundary of lot 4 on the north."

Upon like principle, in M'Iver's Lessee vs. Walker, 9 Cranch, 173, it was held that a creek which was shown by the plat to traverse the land, must be reckoned with as a natural monument to which courses and distances must be accommodated, although it did not appear upon the plat in the position of a boundary, and although not referred to either in the certificate of survey or in the patent.

The efficiency of a plat to invest with the charac-

ter of a monument, a water course or other way, which it depicts as the boundary of a tract of land, was strikingly exhibited in Barclay vs. Howell's Lessee, 6 Pet., 498, 510, where the indications of a plat that the conveyed land was bounded by a certain street, were enforced against an express inconsistent call of the deed itself for another boundary.

The grounds upon which, either by counsel for defendants or by the lower courts, it has been argued that the circumstances of this case are so exceptional as to withdraw it from the operation of the general rule in favor of monuments, may be completely tabulated as follows:

(1) That the rule is over-taxed by the magnitude of this discrepancy.

In this connection it is specially argued that as one consequence of the magnitude of the discrepancy, the patentees of these lots are chargeable with notice of the inaccuracy or fraud in the survey; that this survey, as being statutory, is distinguishable from those involved in certain other cases, where the supremacy of monuments has been enforced by this court against even larger discrepancies of distance; and that the confused manner in which the several lots which are shown by the plat to abut upon Cedar Island Lake will intersect and overlap one another if recognized as extending to the actual shore of the lake, is available

to the defendants as a reason why those lots should be terminated at the meander line.

(2) That the relative weight of monuments and distances is ultimately a question of intention, and that under the circumstances of this case, the lake as a monument, is a less trustworthy index to the intentions of the parties to the patents than are the specifications of course, distance and quantity.

(3) That in this instance, there was no actual government survey of the interior lines of the township, the field notes returned by the surveyor being largely fictitious.

The first and second of these contentions depend so largely upon an inquiry into the *reason* or principle which underlies the rule in favor of monuments, and otherwise so merge into each other, that both can be advantageously covered by a single discussion.

Briefly outlined, the propositions which we shall endeavor to commend to the approval of the court are: That the rule in favor of monuments is absolute and universal; and that such is the settled doctrine of this court; that the *reason* underlying the rule, is such as to require universality for every purpose of mere interpretation, and is such as to forbid the relaxations contended for by the defendants; that while the rule has never been avowedly repudiated by any American

court, there are three or four states in which it has been practically nullified by demonstrably vicious processes of attenuation; that the degeneration of the doctrine in those particular states is distinctly traceable to a misconception and misstatement of the *reason* of monumental supremacy; that in determining the weight of authorities cited on this subject, a sharp line of distinction must be drawn between those few jurisdictions where the rule has degenerated, and the many still administering it in its purity; and finally, that as has been repeatedly adjudicated here, the force of monuments returned and described by the surveyor, is not impaired by the fact that actual measurements were not made.

FIRST POINT.

Whatever may be its reason, the rule in favor of Monuments is universal; and such is the settled doctrine of this Court.

While perhaps, from the nature of the case, a judicial declaration of the universality of any rule, can not claim in full measure the credit of an adjudication, it approaches it closely, as being in substance a judicial determination of the *nature* of the rule, and when

reiterated broadly and with deliberation under a great variety of conditions, may well be accepted as authoritative.

"It may be laid down as a *universal* rule that course and distance yield to natural and ascertained objects."

Story, J. in Preston's Heirs vs. Bowmar, 6 Wheat, 582.

"In ascertaining the boundaries of surveys or patents, the *universal* rule is this; that wherever natural and permanent objects are embraced in the calls of either, these have absolute control, and both course and distance must yield to their influence."

Daniel, J. in Brown vs. Huger, 21 How., 305, 318.

"But ordinarily surveys are so loosely made, and so liable to be inaccurate, especially when made in rough or uneven land or forests, that the courses and distances given in the instrument are regarded as more or less uncertain, and *always* give place in questions of doubt or discrepancy, to known monuments and boundaries referred to as identifying the land."

Clifford, J. in Higueras vs. United States, 5 Wall., 827, 835.

"It is a *universal* rule that course and distance yield to natural and ascertained objects."

Swayne, J. in Co. of St. Clair vs. Lovingston, 23 Wall., 46, 62.

The rule is also stated in unqualified and absolute terms in the following cases:

M'Iver's Lessee vs. Walker, 9 Cranch, 173, 178.
Morrow vs. Whitney, 95 U. S., 551, 555.
Gerrard vs. Silver Peak Mines, 82 Fed., 578, 585.
Nelson vs. Hall, 1 McLean, 518. (Fed. Cas. No. 10107).
Koons vs. Bryson, 69 Fed., 297.
Robinson vs. Moore, 4 McLean, 279. (Fed Cas. No. 11960).
Kirwan vs. Murphy, 83 Fed., 275, 278-9.
Jones vs. Martin, 35 Fed., 348.
Ellenworth vs. Standcliff, 42 Fed., 316.
United States vs. Murrey, 41 Fed. 468.
Whitehurst vs. McDowel, 53 Fed., 633.
McDowel vs. Whitehurst, 47 Fed., 757.
Same Sase, 103 Fed., 157.
Same Case, 109 Fed., 354-5.
Belden vs. Hebbard, 103 Fed., 532 at 541.
Ex-Party Davidson, 57 Fed., 883.

The rule, consistently with these unqualified statements of it, has been repeatedly enforced by this court, in cases involving larger discrepancies than in the case

at bar, and as large as are likely to occur within the range of actual experience.

Thus in *Newsom vs. Pryor's Lessee,* 7 Wheat., 7, one of the boundaries was described as running "south eight hundred and ninety-four poles to a stake crossing the river." It turned out that in order to cross the river, this distance must be increased to twelve hundred and twenty-two poles, an excess distance of more than a mile.

The discussion of this discrepancy by Chief Justice Marshall is worthy of quotation. It is as follows:

> "The distance must be disregarded, and this line so run as to cross the river, or the distance must control the call for crossing the river. These difficulties have occurred frequently and must be expected to occur frequently where grants are made without an actual survey. *Some general rule of construction must be adopted; and that rule must be observed,* or the conflicting claims of individuals must remain forever uncertain.
>
> "The courts of Tennessee, and all other courts by whom causes of this description have been decided, have adopted the same principle *and have adhered to it.* It is, that the most material and most certain calls shall control those which are less material, and less certain. A call for a natural object, as a river, a known stream, a spring, or even a marked tree, shall control both course and distance. These decisions are founded on two considerations. Generally speaking, it is the particular intention of the purchaser to ac

quire the land lying on the stream called for, as being more valuable than other land; and, in every case where a natural object is mentioned, it designates the land surveyed had there been an actual survey, much more certainly than course and distance can designate it. In this case, for example, the surveyor says that he has run south 894 poles, to a stake crossing the river. Now, it is much more probable that he should err in the distance, than in the fact of crossing the river. The conclusion, therefore, had an actual survey been made, would be, that the line did cross the river.

"The general effect of this principle undoubtedly is, that the purchaser acquires more land than is expressed in his grant, and more than he has paid for. Where this has been thought an object worthy of legislative attention, provision has been made for it. Courts cannot now shake a principle so long settled, and so generally acknowledged."

Yet after the lapse of another century the learned counsel for these respondents think they can shake it in a case involving a slighter discrepancy. In the Newsom case the single discrepancy between the distance and the natural monument named in definition of the second line of the survey, resulted in adding to the estimated contents of the granted tract about seventeen hundred acres of land lying in a strip a mile wide and about two and two-thirds miles long. It will be observed that the decision is distinctly placed, upon

the ground that the general rule *must*, as a matter of course, be observed. *Indeed this court has never supported a monument upon any other ground.*

In *Ayers vs. Watson*, 113 U. S., 594, there was a *discrepancy of about a mile and a half*, and it was declared by the court that the monument must control if capable of being identified. (P. 602).

In *Land Co. vs. Saunders*, 103 U. S., 316, a boundary line was described as "beginning at the northeast corner of the Town of Lincoln and running east seven miles and one hundred and seventeen rods to Hart's location; thence southerly by the western boundary of said location," etc. The first mentioned line, in order to reach Hart's location would have to be lengthened something over a mile beyond the distance stated in the deed. The case against the monument was skillfully presented by able counsel, and the claim of Hart's location to recognition as a monument, was complicated by the fact that the location was a tract nominally only seven miles in length, but really covering thirteen miles upon the ground, the side lines of which had never been definitely located or marked, and were involved in manifest uncertainty. In the opinion of the court, the magnitude of the discrepancy is not treated as presenting any question for discussion. The debatable question was, whether the invisible and unlocated side line of Hart's location, which could be

ascertained only with great difficulty by recourse to the courses and distances specified in the Hart patent, could be regarded as constituting a monument. That question having been determined in the affirmative, the rule in favor of monuments was treated as absolute, and it was declared by the court, speaking by Bradley J.:

> "Hart's location is called for, and to that location *we are bound* to go."

We are not aware that litigation ever arose, directly involving the boundaries of Hart's location. The statement above made as to the discrepancy of six miles in its length, is based upon facts appearing as matters of general history, in the briefs in the Saunders case. The facts concerning that location as there disclosed, however, furnish a very interesting and impressive illustration of the intrinsic force of monumental boundaries. The location was described as beginning at the tract of land granted to Vere Royse, and running in a generally northerly direction, by specified courses and distances, "until it meets the notch or narrowest passage leading through the White Mountains lying upon Saco River." The *termini* being thus unmistakably fixed by monument, no doubt appears to have ever been raised, that the location must be construed to include all the land between the

monuments, although the distance was six miles greater than specified in the deed.

In *Chinowcth vs. Haskell's Lessee,* 3 Pet., 92-98, there was a discrepancy of some four thousand feet between the distance specified and the point where the monument was claimed to be. The alleged monument having been held incapable of identification, the distance was allowed to prevail, but it was distinctly conceded that the result would have been otherwise if the monument had been found. The court, speaking by Marshall, C. J., (p. 98) said:

> "If the grant in this case had called for two small chestnut oaks marked as a corner to Robert Young's survey of one hundred thousand acres (an adjoining survey), the mistake in the course and distance would not have prevented the line from being run from the corner at D. to the chestnut oaks."

In *Horne vs. Smith,* 159 U. S., 40, at pages 40, 43, it seems to have been the intention of the court to concede that the boundaries would have extended to Indian River, a mile or more beyond the specified distance, if that river had in fact been the body of water upon which the survey terminated. The case went off on the fact that the water actually encountered by the surveyor was not Indian River, as he supposed, but a bayou running parallel to it, which he misnamed.

In *Mitchell vs. Smale,* 140 U. S., 406, hereinafter cited in connection with other meander line cases, the supremacy of a lake as a monument was enforced, although the area of the patented lot was increased six fold over the indications of course and distance.

To the same effect are the state decisions.

In *Simm's Lessee vs. Baker,* Cooke, (Tenn.) 146, (A. D., 1812), the call was for Duck River, and the distance gave out a mile and eight poles before reaching it. The court by McNairy, J., sustained the call for Duck River, remarking that the discrepancy was not so great as in many cases where the rule had been adhered to. "Indeed," he added, "so far as my knowledge on the subject extends, *no instance has occurred where the courts have been guilty of a departure from the rule.*"

So in *Whiteside vs. Singleton,* Meigs, (10) 207, 218, 219, the monument was held to prevail, although as appears from the statement of facts in Overton's heirs vs. Cannon, 2 Humph., 264, 266, involving the same grant, the discrepancy amounted to eighteen hundred acres on a grant of five thousand.

So in *Fowler vs. Nixon,* 7 Heisk, 719, 724, (A. D., 1872), the discrepancy between monuments and distances, was such that to recognize the former would increase to fifteen thousand acres, a grant which, according to the latter, would cover only two thousand

acres. The monuments were sustained, and the court said:

> "Nor can the defendant object to the grant because it contains fifteen thousand acres instead of two thousand acres. The law is well settled that a natural object such as a river, will control a call for distance. Hence when the third line calls to run nine hundred poles to Duck River, the line must be extended to Duck River even though in so doing much more land is embraced than the grant calls for."

So in *Sturgeon vs. Floyd,* 3 Rich., 80. The supremacy of the monuments was enforced although they enclosed one hundred and thirty-six thousand acres, while the courses and distances covered less than fifteen thousand acres.

So in *Simpkins Admrs. vs. Wells,* (A. D., 1897), 19 Ky., L. Rep., 881, a line described as twnety poles in length was recognized as extending 141 poles to the designated monument.

So in *Pitman vs. Nunnelly,* 17 Ky. L. Rep., where the courses and distances called for only a third as much land as the monuments did, the latter were sustained.

So in *Prest. et al. vs Clark,* 31 N. C., (9 Ired.) 58, 59, the main question was whether the patent should be construed as calling for a lake as a monument. The court said:

"Then if the third line here, instead of being described as 'north eighty poles,' had gone on further, 'to the lake,' there could be no scruple in extending the line to the lake, though it be three or four times the distance."

The ambiguity was resolved in favor of the lake as a monument, and the line extended accordingly.

The principle is uniformly recognized in the Minnesota cases.

Turnbull vs. Schroeder, 29 Minn., 49, 51.
Nicolin vs. Schuerderham, 37 Minn., 63.
Chan vs. Brandt, 45 Minn., 93.

There is another line of cases, which, while involving discrepancies of less magnitude than the foregoing, admirably illustrates the conclusive force of the rule as a principle of interpretation. They are cases in which monuments were enforced against the courses and distances although it appeared with exceptional distinctness that the result was to pass more land than the parties had designed. Such, for example, is the case of *Pringle vs. Rogers,* 193 Pa. St., 94, 98, (A. D., 1899), where an administrator confessedly intended to sell an entire tract. The courses and distances included the entire tract,—the monuments only a part. It was held that the monuments must prevail. The court's discussion of the subject seems worthy of reproduction in full. It was as follows:

"Here, the parol evidence showed a mistake by somebody, when the unambiguous description was applied to the marks on the ground; in two instances, the lines were shorter than in the deed, when the monuments called for were reached; either the lines were erroneously measured or erroneously written, or the monuments called for were not at the end of the measured distance; this was a mistake collateral to the deed. Either the monument must be disregarded or the lines shortened. What should be judicial decision in such dilemma? The court below conceded that as a rule the monuments on the ground must control the distance, but said in substance that if the jury could not locate all the lands shown by the record to have been conveyed, then they were at liberty to disregard the monuments and locate the land by the distances. This, we think, was a flat reversal of a well established rule; it put the measurements as the controlling fact, instead of a fixed, conspicuous, enduring monument on the ground. The rule is a very ancient one. As early as 1818, in *Hall vs. Powell*, 4 S. & R., 456, Duncan, J., said regarding it that it had been many times settled, and the 'law had ever been so held.' This court has since strictly adhered to it. Hundreds of thousands of acres of land in this commonwealth are now held because of the judicial enforcement of it; for it is a well known fact that but few of the recorded distances of the early surveys were afterwards found correct, when run between the monuments on the ground. Today owners of land under deeds which have not been the subject of judicial interpretation rest secure in the conviction

that their boundaries are determined by the monuments on the ground. The legal profession understand the rule to be so irrevocably settled that they do not counsel litigation in the face of it. True, in our courts, it was probably first applied in determining disputes under original surveys, and these have been the subject of its application since in the large majority of cases; but the reasons on which it was founded were just as persuasive in impelling its adoption in disputes concerning the innumerable divisions and subdivisions of land as in those resulting from original surveys. It is one to which less uncertainty attached than to any other. It was not framed because mistakes occurred, only from mismeasurement of the surveyor, or carelessness of the scrivener in recording the distance, but because experience and observation had demonstrated that the surveyor or enginer was less likely to mistake by sight and record the monument at which he stopped than his measurement and computation of the distance. There is nothing in the facts of this case which takes it out of the operation of the rule. We concede that the administrator, probably, intended to sell this strip of land as part of the Schooley tract. We infer this intention, because his petition for sale averred that the sale of all the lands of decedent was necessary for payment of his debts, and because it was his duty to sell all; but it is as clear as express descriptive words and undisputed monuments can make it, that he did not sell this strip to anybody. We think he ought to have sold it; the court below and the jury thought so too; they gave effect to their view of his duty by

rendering judgment that he did that which he ought to have done. Neither we nor they dare tamper with a rule on which rests the security of titles, a rule which Duncan, J., declared had ever *been the law.*

"Besides, the purchaser was bound to see before final confirmation of the sale, that the quantity of land she thought she was buying was embraced in the boundaries of her deed, as the law fixed it by the monuments on the ground. The orphan's court, being a court of equity, would then, on complaint by her, without doubt, either have relieved her of her bargain or have enlarged the description so as to accord with her belief as to quantity. But, having accepted her deed and paid her purchase money years ago, caveat emptor must apply now, when, in effect, she sets up a deficiency in quantity as warranting her in holding possession of more land than was conveyed to her. Sackett vs. Twining, 18 Pa., 199.

"We agree entirely with the argument of counsel for appellee that where the record of writings constituting a conveyance, when taken altogether, on their face, show an ambiguity in the description evidence aliunde may be resorted to to determine what was intended to be embraced in the deed, and all the authorities cited by them sustain the argument; but there is no decision of this court that ever countenanced a disregard of the unmistakable monuments on the ground, to carry out a conjectural intention of the parties to convey more land than that embraced in the description; and this intention to be found in

great part, too, by a jury from records and written documents."

So in *Johnston vs. House,* 2 Hayw., (N. C.) 301, (A. D., 1804), a surveyor after locating one corner by a *red* oak, found he had included too much land and thereupon marked a *white* oak at a distance of eighty poles instead of the 160 poles marked by the red oak. The patent called for eighty poles to a red oak. It was held that to the red oak the line must go, so far as mere interpretation was concerned. The case was cited approvingly in *Deaver vs. Jones,* 119 N. C., 598, 600.

So in *Gilman vs. Riopelle,* 18 Mich., 145, 164, even under the stringent rules as to clearness applicaple to divestment of title by tax sale, a description by monument was held by the court per Cooley, C. J., to carry an 80 acre tract although only twenty acres were called for by the deed.

Such cases as these suggest, as is undoubtedly the fact, that the logical relation in which the courses and distances stand toward the monuments is almost exactly identical with the relations sustained by specifications of quantity. Concerning the latter the authorities are equally uniform that the monuments must prevail.

Barclay vs. Howell's Lessee, 6 Pet., 498.

Thus in the old case of *Willoughby vs. Foster,* Dyer 80 b., a deed of "all my meadows in D. containing 10 acres" was held to carry the 20 acres actually covered by the meadow.

So in *Llewellyn vs. Earl of Jersey,* 11 M. & W., 183, 188, specifications of quantity were in the absence of monuments ignored in favor of boundaries fixed by a plat drawn to a scale.

In *Reddick vs. Leggat,* 7 N. C., 539, 544, it is said *arguendo,* "I grant to J. S. 1000 thousand acres of land, and no more, bounded as follows, etc., and 2000 acres are enclosed in the lines. The 2000 acres pass, as the butts and bounds are more certain than quantity, which depends upon measurement and calculation; and the quantity is in no way material except as to lands where the boundaries are doubtful, and there it may be thrown into the one scale or the other according to circumstances."

No matter how specific may be the intention to convey only a given quantity, the monuments will prevail against it.

Chandler vs. McCard, 38 Me., 564.

So in a contract for "the south 100 acres of lot 15, beginning at the southeast corner, and run by the surveyor 100 acres exactly," the *principle feature or*

substance of the agreement, is not for the south 100 acres, but for the tract run by the surveyor."

11 U. Can. Q. B., 631.

This is the ground substantially, upon which as pointed out by Mr. Rawle in his work on covenants, it is held that covenants of title have no reference to the quantities specified in the deed. The *subject matter* of the conveyance, is the land enclosed by the monuments be it more or less. *Rawle on Covenants,* (5th Ed.) Sec. 297. „

In Canada, monuments are as absolutely supreme as with us. In *Dunn vs. Turner*, 3 U. C., Com. Pl., 104, Macauley, C. J., in supporting the monuments in a case of substantial discrepancy, remarked that he was not prepared to say that it would make any difference though the monuments were such as to reduce the land to a fourth or even an eighth of the area covered by courses and distances.

So in *Doe Dem. Murray vs. Smith,* 5 U. C., 225, 226, it was said:

> "If the crown makes a grant with a description, which according to visible boundaries, natural or otherwise, does clearly embrace certain lands, then those lands *must* pass, and the patentee *must* be allowed to hold up to the specific fixed boundary mentioned, provided the crown had a right to grant the land thus described."

It is further to be observed that when this rule in favor of monuments has passed into legislation, it has been without qualification. Thus section 2077 of the California Code of Civil Procedure provides as follows:

"When permanent and visible or ascertained boundaries or monuments are inconsistent with the measurement. either of lines, angles or surfaces, the boundaries or monuments are paramount." The like rule, which indeed, is identical with that embodied from their foundation in the statutes regulating our national surveys, was enacted in North Carolina as early as 1715 as is noticed in *Prest. etc. vs. Clark*, 31 N. C., 58, 59. It was there directed that in rerunning the lines of a survey "the surveyor shall proceed by marked trees, if the same can be found, or by natural boundaries, if any mentioned, and if there be not marked trees, then he shall follow the courses mentioned in the patent, so as the intention of the party first taking up the land may be observed as near as may be."

SECOND POINT.

The rule of monumental supremacy when viewed in the light of its true reason, is seen to be necessarily a universal rule of interpretation.

Its *reason* is, that the description of land by reference to monuments, imports that the very thing

and the *only* thing intended to be dealt with, is a defined tract, segregated by visible marks from the surrounding land. This, in every case, is as literally true, as though the land had been isolated by wall or trench instead of by the customary marks made or adopted by the surveyor. In principle every conveyance by visible mark or monument, is like the conveyance of an island, of a given number or name. Who can conceive of the operation of such a conveyance being contracted or expanded by clauses descriptive of the acreage of the island, or of the lengths and courses of its shores?

> "A survey is made to inclose a tract of land by a visible line."
>
> Williams J., in Grier vs. Penn. Coal Co., 128 Pa. St., 79, 95.

If the presence of the courses and distances in a deed, could only be accounted for upon the hypothesis that they were inserted as an independent, competitive description of the land conveyed, it might be necessary to assume that the parties, however unhappily, intended to thus to bring confusion upon their grant. But, of any survey, it is of course incumbent upon the surveyor to preserve notes, telling what kind of marks he has made or adopted, and as nearly as practicable, where they can be found, the salient features of which notes may be set out in the conveyance.

Where to look for marks or monuments can only be definitely told in terms of course and distance, and it is for this purpose solely, that those terms are introduced into a conveyance of a surveyed or demarkated tract.

After the expense of a survey has been incurred in order to make possible a sale by visible bounds rather than by imaginery lines, could anything be more irrational than to impute to the parties an intention to undo the survey, and remit themselves back to imaginery lines, merely because they have spread upon the face of the conveyance, in terms of course and distance, a description of the location of the segregating monuments? That would be to convert into an engine for the destruction of the monuments, clauses which were designed only to identify and perpetuate them.

That the parties to a sale of land which is described by reference to a particular survey, contemplate the conveyance of the visibly defined tract which by that survey was marked off, is under any ordinary circumstances a matter of legal intendment. Any contrary supposition is conclusively rebutted by the circumstance that *it was to avoid the necessity for conveying by imaginary lines,* that the surveyor was employed to make or adopt *real* ones.

Are courses and distances combined with monuments in the description of land, because the parties

are in doubt whether the subject matter of their contract or conveyance is the entity identified and limited by the monuments, or whether it is the other entity identified and limited by imaginary lines, and because they wish to postpone the question, for conjecture by court or jury? It may be said that both kinds of boundary are referred to upon the supposition that, the survey having been exact, the two are identical. But the suggestion is unfounded in fact. The inaccuracy of surveys is proverbial, except where conducted over small areas under the most favorable conditions, by the most skilled surveyors. Nothing can be imagined which would entail more distraction upon boundaries than the judicial erection of courses and distances, (which, as already noticed, are introduced into the deed or patent merely as a part of the description of the monuments), into an independent and competitive and habitually inconsistent description of the thing to be conveyed.

If, in order to break the force of the fact that the parties intend to convey the land enclosed by the monuments, it is said that they also intend to convey a tract of given dimensions or quantity, the answer is, that this latter, is not an intention which is competitive, or from a legal point of view, concurrent, with the intent to deal with the visibly segregated tract,—(which is always the immediate or final intention); but is remote, collateral or inducing matter. *Every*

survey which is made the basis of a conveyance, has within it the elements of an arbitrament of the courses and distances; so that *finally* the transaction has reference only to the tract *which,* not absolutely, but only *according to that survey,* is of the specified dimensions.

It was mainly in connection with public land surveys in America during the Colonial period and the immediately ensuing decades, that descriptions embodying references to course and distance came into vogue. They appear to have been practically unknown in European conveyancing. Scarcely half a dozen cases involving such descriptions appear in the English reports down to the present time. In thickly settled communities where nearly every tract has a name, or a well defined occupancy, or a defined chain of title, or bordering streets or roads, or immemorial adjoiners, or well known natural objects, reference to which can be incorporated in descriptions, and where there is a teeming population in whose knowledge and memory these, and the artificial monuments referred to, will find lodgment and preservation, it is unnecessary to point out mathematically where the monuments are to be looked for. But in the trackless woods of America the settler or purchaser who undertook to give publicity to his boundaries was confronted with different conditions. His wilderness monuments would be hard to find and easy to lose. This was the exigency which

gave rise to the custom of *describing the location of the monuments* as well as the monuments themselves. The Colonial population were of a race which had been in the habit of bounding and sub-dividing its lands by creeks, rivers, marked trees, blazed lines, mounds, stones and stakes, substantially upon the methods embodied in our public land legislation, for too many thousands of years, to justify the supposition that they planned their abandoment in favor of imaginary lines.

Ross's Early Land Holding Among the Germans, 13, 149, 150.

The system of surveys finally established by Congress may be said to have had four ends in view: To mark off the public lands into tracts of convenient size and symetrical form by monuments of traditional sorts, ready for individual purchase or occupancy: to determine the number of acres for which the purchasers of the several tracts should be charged: to supply the necessary data for a plat or picture of the lands as enclosed in and defined by their natural and artificial monuments or boundaries, by reference to, and in reliance upon which, purchases might be made; and to perpetuate notes of course and distance, which would be a guide to subsisting monuments, and a means of approximately replacing those impaired by lapse of time. Not to supersede but to fortify and elaborate the traditional system of boundary by monu-

ment, was the unmistakable policy of the legislation. The roughness and inaccuracy of the surveys, particularly in remote, uneven and densely wooded regions, was, however, and always has been, a matter of the utmost notoriety. The legislation and the Department regulations based upon it as well as the judicial decisions; bristle with assumptions of discrepancy between monuments, and courses, distances and quantities, as matters of course. Thus the statute has always provided for these anticipated discrepancies as follows:

> "All the corners marked in the surveys returned by the surveyor general, shall be established as the proper corners of sections, or subdivisions of sections, which they were *intended* to designate. * * * The boundary lines, actually run *and marked* in the surveys returned by the surveyor general, shall be established as the proper boundary lines of the sections, or subdivisions, for which they *were intended, and the length of such lines, as returned, shall be held and considered as the true length thereof.*"
>
> Revised Statutes, Sec. 2396.

Always and everywhere,—certainly under the national system of surveys, the *essence* of the surveyor's function is not measurement or computation but *demarkation;* not to run his lines in the air but to mark them upon the ground, where so long as they can be

identified they are without competitors. That this is so, is recognized by the Department regulations which embrace the following paragraph, the italics being in the original:

> "Establishing Corners. (1) To procure the faithful execution of this part of a surveyor's duty, is a matter of the utmost importance. After a true coursing and most exact measurements, the establishment of corners is the consummation of the work. Therefore, if the corners be not perpetuated in a permanent and workmanlike manner, the *great aim* of the surveying service will not have been attained."
>
> The Public Domain, (A. D., 1883), p. 590.
> Williams J., in Grier vs. Penn. Coal Co.,
> 128 Pa. St., 79, 95.

The world still worships at the shrine of Terminus; landmarks are still sacred. And with the best of reasons, unless we are content to convert our landed possessions into *floats*, to be wafted about by each succeeding surveyor who claims to have applied more accurately than his predecessors, the specified courses and distances from the nearest principal meridian; if indeed those meridians themselves are not also to be loosened from their monumental moorings.

We say then:

(1) *That it is impossible to account for the combination of course and distance with monu-*

ments in patents, plats or deeds, upon the theory that the parties have fatuously or inanely assumed that the tract enclosed by the monuments will prove to be identical with that enclosed by the imaginary lines.

(2) *That it is equally impossible to suppose that the parties, foreseeing a discrepancy between the marked and the imaginary lines, have deemed it conductive to a good understanding to insert them both as independent and competitive description to contradict and discredit each other.*

(3) *That the key to the combination lies in the fact that course and distance are incorporated only as clews to the location of the monuments.*

(4) *That they never purport to be abstract or absolute courses and distances, but are returned by the surveyor as merely the courses and distances which appear to exist between the monuments, according to the measurements which he made. How, therefore, could his report of the distance be accorded precedence over the actual distance on the ground?*

(5) *That in no instance whatever do the courses and distances take effect as directly descriptive of the land, or otherwise than indirectly through the monuments, by identifying them while*

they last, and approximately relocating them when lost.

(6) *That whatever other reasons there may be for it, the universality of the rule in favor of monuments, is thus necessitated by the fact, that so long as the monuments can be found, there is no competitive description of the land.*

(7) *That although in a case of conflicting monuments, courses and distances may perform their legitimate function in identifying the true and rejecting the false; and although a monument impossible of application is no monument at all; and although mere mistakes of expression respecting monuments, (as by the giving of a wrong name to an object) may be corrected by interpretation; the fact remains that however wide the discrepancy, if monuments intentionally adopted are impeached for error only because they are more distant from each other, and so inclose a larger area than intended, the error, for all purposes of mere interpretation, is in the distance and not in the monument, and is error relative to a remote and collateral matter...If the discrepancy is so extreme as to demand some form of relief, it must be sought through reformation in equity, where all questions of intention, estoppel in pais, etc., can be fully investigated, and the relief adapted to the equities of the particular case.*

The authorities supporting these propositions are abundant.

In *Blasdell vs. Bissell,* 6 Pa. St., 258, boundaries had been marked under a parol contract for the sale of land. The deed, which was executed some years later, described the property by courses and distances, which varied from the boundaries as marked. It was held that the marked boundaries must prevail, and the reasons assigned by Chief Justice Gibson were as follows:

> "When a tract of land has been surveyed for a warrantee, by courses and distances subsequently called for in a patent for it, the lines actually traced on the ground, as shown by the landmarks, and not those produced by the courses and distances, constitute the boundaries of the grant; and why should they not constitute the boundaries of a grant by an individual? The certainty of result produced by the rule, and the convenience of it, are alike reasons for its application to both; or perhaps they operate more forcibly for its application to the latter in proportion to the difference of value between wild and cultivated land. The calls of a survey, and not its courses and distances, are to govern; and where there are actual lines of demarkation, *the compass and chain are no more than instruments to point them out.* Where they are not to be found, the results obtained by actual survey are the next best *evidence of their location.* The mischiefs of a system adopted in an adjoining

state, where courses and distances are everything, and landmarks nothing, have induced us to cling to our own in all cases. Carelessness of chain-carriers, roughness of surface, variation of the compass, imperfection of the instrument, unskilfulness in the use of it, and other causes not to be enumerated, inevitably produce, in every instance, more or less uncertainty of result; and if we suffered ourselves to be governed by the compass and by measurement, collisions would be incessant."

In *Cox vs. Couch,* 8 Pa. St., 147, 154, which involved a discrepancy between monuments and distances, the rule in favor of the former was declared to be *invariable,* and the court, speaking by Chief Justice Gibson, said:

"It is a principle of construction, that where land is described by courses and distances, and also by calls for adjoiners, the latter, where there is a discrepancy, *invariably* govern; and it is as applicable to conveyances, and as it is to official surveys. By reason of imperfection of instruments, as well as inequalities of surface and carelessness of assistants, extreme accuracy is not to be attained by the compass and chain; while, on the other hand, calls for natural objects, or, what is much the same, known and established lines of contiguous tracts, admit of perfect certainty. When a vendor, therefore, conveys by established landmarks, the subject of the grant will neither overrun nor fall short of them. They form the

true boundary, *and the courses and distances serve but to point towards the place.*"

This statement of the rule was approved and followed in *Wood vs. Appal,* 63 Pa. St., 222.

So in the earlier case of *Yoder vs. Fleming,* 2 Yeates, 311, (A. D. 1798), it is said:

> "Natural and artificial boundaries of the survey have uniformly prevailed over courses and distances * * * *The lines actually run on the ground are the true survey and appropriation of the land contracted for,* but the *return* of survey is only *evidence* thereof, and shall be controlled by the actual survey."

This case was cited and followed in *Hall vs. Powell.* 4 Serg. R., 456, 461, (A. D. 1818), where the court said:

> "In this state the natural and artificial boundaries, the monuments described as the boundaries and limits of a survey, in general form the *only evidence* of a survey. To these limits, thus returned, the survey extends, *whatever* may be the courses and distances expressed in such return; and this is the common law of the land. If unbroken usage and a uniform course of judicial decision make the law, then this was properly decided by the court to be a general rule of property."

The foregoing expositions of the reason of the rule by Chief Justice Gibson, derive an especial interest and value from the fact that the central position of Pennsylvania, her acknowledged precedence in development of a public land system, and the holding of the early sessions of Congress at Philadelphia, resulted in the exercise by her land system of a very marked influence upon that of the United States.

Public Domain, p. 468.

The same views had, however, long before been expressed by the North Carolina court, speaking by Henderson, J., in *Doe vs. Paine*, 4 Hawks, 65, 71, (A. D. 1825). It was there said:

> "Where natural objects are called for as the *termini*, and course and distance and marked lines are also given, the natural objects are the *termini*, and the course and marked lines *can only be resorted to by the jury to ascertain the natural objects. When the natural object is unique or has properties peculiar to itself, these boundaries or guides can have but little effect, in fact, I believe none.*"

So in the earlier case of *Cherry vs Slade's Administrator*, 3 Murphy, 82, 86, (A. D. 1819), in a very able opinion Taylor, C. J., declared that the first rule in construing a description of land is that:

"Whenever a natural boundary is called for in a patent, the line is to terminate at it, *however wide of the course called for it may be, or however short or beyond the distance specified.* • • • A natural boundary is fixed and permanent, and its being called for in the deed or patent *marks beyond controversy the intention of the party to select that land from the unappropriated mass.*"

So in *Deaver vs. Jones,* 119 N. C., 598, 599, it is said:

"A deed is a contract, and the *highest evidence* of the identity of the subject matter of it, is proof of the consent of two minds that certain marked lines or quarters corners should constitute the boundary."

So in *Miller vs. White,* I N. C., 223, 226, (A. D. 1802), in applying the general rule that monuments prevail, the court said:

"If it were intended to be bounded by the distance, why refer to the line of another tract? Why not mark a tree at the end of the distance if it is really surveyed, or specify the distance only if it's only platted?"

So in *McClintock vs. Rogers,* 11 Ill., 279, 296, (A. D. 1849), the court by Caton, J., expressed, although in different language, substantially the same theory of

the rule that is announced in the foregoing Pennsylvania and North Carolina cases. It was said:

> "All agree that courses, distances and quantities must always yield to the monuments and marks erected or adopted by the original surveyor, as indicating the lines run by him. These monuments are *facts;* the field notes and plats indicating courses, distances and quantities, are but descriptions *which assist in ascertaining the facts."*

It was perhaps at the hands of Chief Justice Bibb, however, in his opinion in 1828, in the Kentucky case of *Baxter vs. Evett's Lessee,* 7 Mon., 329, that the *principle* of this subject received its most exact and succinct expression. He there said:

> "The *courses and distances* specified in a plat and certificate of survey, *are designed to describe the boundaries as actually run and made by the surveyor, and to assist in preserving the evidence of their local position, to aid in tracing them while visible, and in establishing their former position in cases of destruction by time, accident or fraud. As guides for these purposes, the courses and distances named in a plat and certificate of survey are useful. But* a line or corner established by a surveyor, in making a survey upon which a grant has issued, can not be altered because the line is longer or shorter than the distance specified, or because the relative bearings between the abuttals vary from the course named in the plat and certificate of survey. So, if the line run by the surveyor be

not a right line, as supposed from his description, but be found by tracing it to be a curved line, yet the actual line must govern; *the visible actual boundary, the thing described*, and not the ideal boundary and imperfect description, is to be the guide and rule of property."

It will be observed that the four courts whose expositions of the principle of the superiority of monuments are above quoted, while severally approaching the subject without particular reference to each others views, each formulating the principle in phraseology of its own choice, concur in substantially the same view, to-wit: That the logical relation sustained by the monuments toward the identity of the thing conveyed is *fundamentally* different from that which is sustained by the specifications of course and distance; that the monuments enter directly into the identity of the land in ways that the courses and distances do not; that it is merely to identify and perpetuate the monuments that the courses and distances are given; that the thing of which the courses and distances are descriptive, is the visible monumental inclosure which segregates the land; that the issue, is as to the force and validity of the attempted description, as against the visible entity which it was intended to describe; that for two reasons, the monuments cannot be overridden by the courses and distances; (1) that courses and distances are introduced only because recourse to such terms is the

only available method of accurately describing the location of the marked lines or corners of the tract which has been marked off as the visible subject matter of the conveyance; (2) that the specification of course and distance *never purports to have reference to absolute course or distance*, but only to *the course or distance which according to the measurements made by the surveyor appeared to him* to exist between the monuments.

The question is one which seems never to have been quite so minutely analyzed by this court as in some of the foregoing State decisions. The principal contributions to the doctrine of the court are the characteristically penetrating thrusts of Chief Justice Marshall in the early case of M'Iver's Lessee vs. Walker, 9 Cranch, 173, 178, by which he chiseled the subject into the form which it has ever since retained. He enunciated three propositions, each of them evidently as a matter of absolute legal intendment.

They were:

(1) "That all lands are supposed to be actually surveyed;" evidently meaning, all lands that are conveyed by combined reference to monuments, courses and distances; a survey being presupposed in such cases because the specification of courses and distances between monuments, imports that they have been measured.

(2) That "the intention of the grant is *to convey the land according to that actual survey.*"

(3) That *"consequently* if marked trees and marked corners be found conformably to the calls of the patent, or if water courses be called for in the patent, or mountains, or other natural objects, distances *must* be lengthened or shortened, and courses varied so as to conform to those objects."

It is thus made to appear, as he points out, that "the *reason* of the supremacy of monuments is, that it is the intention of every grant to convey *the land actually surveyed.*" It will be noticed that this is precisely the reason which we have assigned for the rule, and which is supported by all of the foregoing citations.

That this statement of the *reason* is correct, has been repeatedly recognized by the court, and was indeed elementary law in every colony during the Colonial period. It has always been the tract marked off, for which search has been made by the courts.

Ayres vs. Watson, 137 U. S., 584, 597, 598.
Chinoweth vs. Haskell's Lessee, 3 Pet., 92, 96.

In the recognition of that reason, the Rubicon was crossed.

That *reason* being once assumed or conceded, all

the deductions of the foregoing State decisions become incontestable. In that *reason* they are all securely wrapt up. That reason has its exclusions as well as its inclusions, and imports that it is *not* the intention of the parties to convey with reference to imaginary or mathematical lines. It means that when question arises as to the dimension or content of the visibly demarkated subject matter of the conveyance, the object itself, which constitutes that subject matter, is, with its marks upon it, the best evidence. The only rational explanation of the failure of the Chief Justice to thus elaborate his reasoning, is that from the intention to convey the tract visibly demarkated, the supremacy of its marks and monuments as evidences of its identity, seemed to him to flow as a consequence so obvious and necessary that no further account of the matter was called for. With characteristic acumen, he does indeed anticipate the only argument by which, this reason of the rule being conceded, it would be logically possible to parry any of the deductions which in the foregoing State decisions are drawn from it. He notices that even after the intention to convey the actually surveyed and marked tract is assumed, it might still be argued that in the *identification* of monuments there lurk dangers of mistake, which would equal or overbalance the probabilities of error in the surveyor's measurements, so that the latter should still be regarded as the better evidence of where

it was that the marks and boundaries were actually located by the surveyor. It was in response to such a contention as this, and in denial of it, that he made the following observation:

> "Mistakes in courses or distances, are more probable and more frequent, than in marked trees, mountains, rivers, or other natural objects capable of being clearly designated and acturally described. Had the survey in this case been actually made, and the lines had called to cross Crow Creek, the courses and distances might have been precisely what they are, it might have been impracticable to find corner or other marked trees, and yet the land must have been so surveyed as to include Crow Creek. The call, in the lines of the patent, to cross Crow Creek, would be one to which course and distance must *necessarily* yield."

On two other occasions the general subject was handled by Chief Justice Marshall. In Newsom vs. Prior's Lessee, 7 Wheat, 7, manifestly upon the theory of the universality of the rule, he applied it, speaking for the court, to cover an excess of more than a mile in distance and of about eighteen hundred acres in area. Again, as heretofore noticed, in the case of *Chinoweth vs. Haskell's Lessee,* 3 Pet., 92, he treated the rule as absolute, and declared that if the monument could be found, the line must be extended to it, though involving an excess of about 4000 feet above

the specified distance. *Land Company vs. Saunders,* 103 U. S., 316, and all the other cases cited under our first point, proceed manifestly upon the same view.

No adjudications of this court point in a different direction. *White vs. Luning,* 93 U. S., 514, relied upon by defendants, was a simple case of conflicting monuments, so that necessarily one must be rejected; and such a case illustrates ideally, the true function of courses and distances as identifiers of the true monuments. So with *Shipp vs. Miller,* 2 Wheat., 316, where the incompatibility was between a "buffalo road," and a "dividing ridge," and *Barclay vs. Howell,* 6 Pet., 496, 510, 511, where the conflict was between a street and a river as monument. Of a precisely similar type are the cases of *Cavazos vs. Trevino,* 6 Wal., 773, 785, *Ainsa vs. U. S.,* 161 U. S., 208, 209, *Lily's Admr. vs. U. S.,* 171 U. S., 220, 234-240, except that in those cases the monuments were defective not by reason of conflict with one another, but by reason of indefiniteness or destruction; and except that in those cases recourse was had principally to quantities rather than to courses or distances, to supply the monumental defects.

THIRD POINT.

The degeneration of the rule in particular jurisdictions.

In the State of New York and in Texas and Oregon which have followed her lead, the doctrine is really in ruins. It is indeed, still merrily proclaimed as a rule, but it's foundations have been taken away. The only basis that the rule ever had, was that assigned to it by Chief Justices Marshall, Gibson and Bibb, to-wit: that the thing intended to be conveyed, and the thing for which the courts are therefore searching, is the tract visibly demarkated by the surveyor. If there is to be a free-for-all guessing match whether in view of the facts of each particular case such ought to be deemed the intention of the parties, the monuments can claim no superiority until that question is decided. If the intention was to convey the tract actually marked off, the monuments are supreme; if the intention was to convey a tract bounded by imaginary lines of designated length and course, then the specifications of course and distance are supreme; if the legally efficient intent was to convey a given number of acres then the specifications of quantity must be supreme. What the New York courts have done is to open in each case a guessing match of this kind, by

denying that there is any legal construction or intendment that it is the visibly demarkated tract that the parties intend to convey. For many years it was held in that state as uniformly as anywhere, that monuments were universally supreme.

Jackson vs. Camp, 1 Cow., 605, 612.
Jackson vs. Frost, 5 Cow., 346, 349.
Jackson vs. Ives, 9 Cow., 661.
Cudney vs. Early, 4 Paige, 209, 212.

Also that they were unaffected by specifications of quantity, as where the premises were described as "containing 200 acres strict measure and no more."

Jackson vs. McConnell, 19 Wend., 175.

Afterwards by loosing sight as above mentioned, of the reason and foundation of the rule, they held that where the courses and distances coincide with designated quantity, their accuracy is verified, with the effect of denuding the monuments of their supremacy.

Baldwin vs. Brown, 16 N. Y., 359, 361.
Buffalo etc., Co. vs. Stigeler, 61 N. Y., 348, 351.
Higinbotham vs. Stoddard, 72 N. Y., 95, 99.
Danziger vs. Boyd, 21 J. & S., 398, 409.

What the New York court did was this: It dropped out of sight the foundation fact that where par-

ties convey with reference to the visible demarkations of an actual survey, it is a necessary legal construction, that it is the tract as demarkated that they intend to convey. They then naturally enough found that there was an open question of intention as to what it was that the parties did intend to convey;—whether a marked off tract, an ideally bounded tract, or a given number of acres. Assuming that this was the question requiring solution they justly enough concluded that the rule in favor of monuments ought to be regarded as very flexible indeed. The New York cases marking this fallacious departure will all be seen upon inspection to have been very peculiar cases. They should probably be regarded as having only a temporary tendency to becloud the subject in that state. The probabilities are that when the question is more squarely presented, the New York court will not fail to restore the rule to its true basis and full vigor.

In Texas, however, the rule has gone to irreparable ruin, with the result that the law of boundaries is there a jungle of contradictions, from which nothing but the arbitrament of a court or jury can rescue a boundary afflicted with discrepancies of this kind. It seems unnecessary to enter into the Texan labyrinth as there is a recent graphic and accurate description of it by McCormick, J., in *Blum vs. Bowman,* 30 U. S. App., 50, 54, where he cites the Texas cases and quotes from *Booth vs. Upshur,* 26 Tex., 64, 70, as follows:

"There is no law fixing the effect of any call found in a grant, or giving one more weight or importance than another. Therefore by merely looking at the face of the grant, which has several calls, the controlling call cannot be determined. * * * The lowest grade, * * * is made to prevail over the highest grade, * * * when upon applying the calls of the grant to the land, the surrounding and connecting circumstances show that course and distance is the most certain and reliable evidence of the true locality of the grant."

The situation is the same in Oregon, as is well illustrated by *Hale vs. Cottle*, 21 Or., 580, 585-6, where it is said, that *generally* the monuments will prevail "because the primary object in all such cases is to ascertain the location of the line actually *intended* by the parties. * * * But this is only a rule for construing the descriptive parts of a conveyance when the construction is doubtful, and there are no other sufficient circumstances to determine it, and is, therefore, not an inflexible rule in all cases. There are no fixed and certain rules by which the courts can be guided in determining this question, but it must be governed by that evidence in each particular case which carries conviction to the mind. * * * And if it appears from the face of the conveyance, in the light of surrounding circumstances, that the courses and distances, as given, correctly described the land

intended to be conveyed, they will of course prevail." The New York cases are cited, and it will be observed, that as with them, the business in hand is conceived to be, not the ascertainment of the demarkated tract, but the determination, whether it was the demarkated tract or something else which the parties *intended* to convey.

Prior to the decision of *Davis vs. Rainsford,* 17 Mass., 207, in 1821, the Massachusetts court had enforced, as consistently as any, the rule in favor of monuments.

Howe vs. Bass, 2 Mass., 380.
Pernam vs. Weed, 6 Mass., 131.

In the case last cited, the rule in favor of monuments was expressly declared by Parson, C. J., to be "a mere conclusion of law."

The Rainsford case was intrinsically one of the least possible significance, inasmuch as it was a simple case of *conflicting* monuments. It is the rule in Massachusetts, as generally elsewhere, that monuments in contemplation of the parties at the time of the conveyance, and soon afterwards erected, are of like force with those on the ground when the conveyance is made. In the Rainsford case, such a monument, being a building under construction, or about to be built, was referred to. It was promptly constructed, and the monument thus called for was inconsistent

with the line of another adjoiner, which by implication only, and not expressly, might be regarded as having been referred to. The conflict was solved by recognizing the former monument at the expense of the latter.

This is the first of a considerable line of cases throughout the country which illustrate how frequently it is that courts are so short-sighted that they can *feel* further than they can see;—cases in which courts having a feeling that the rule in favor of monuments ought not to apply, have held it inapplicable upon the theory of flexibility in the rule, whereas, they should have been able to see that the case presented was one of conflicting monuments, and one which, therefore, should be held to lie confessedly and entirely beyond the pale of the rule.

Parks vs. Loomis, 6 Gray, 467, was another case of conflicting monuments, as was also *Murdock vs. Chapman*, 9 Gray, 156, although in a more occult way. Indeed nine-tenths of the cases usually cited in evidence of the flexibility of the rule in favor of monuments, appear upon close examination to be indubitably cases of conflicting monuments. The significance of the Rainsford case lies not at all in the point adjudged, but in its announcement that the rule in favor of monuments is not inflexible. The court arrived at this impression precisely as the New York court had, by overlooking the fact that the intention

to convey the tract marked off by the monuments was a matter of necessary legal construction, and by improvidently assuming that the point of inquiry was, whether the parties intended to convey by reference to the monuments or by reference to imaginary lines.

It does not appear that in Massachusetts, any more than in New York the relaxation of the rule, for practical purposes, has extended beyond a very peculiar and narrow class of cases. Its principal local effect seems to have been to cast the formulas of the subject into such an unhappy state of confusion that the most illuminating account of the rule which the court is now able to give is that enunciated in *Hall vs. Eaton,* 139 Mass., 217, 221, where it is said:

> "The rule that monuments in a description in a deed, control courses and distances is founded on the consideration that that construction is more likely to express the intention of the parties. The intention to run a line to a fixed object is more obvious, and the parties are less likely to be mistaken in regard to it then in running a given distance or by a given course. But, where the circumstances show that the controlling intention was otherwise, the rule is not applied."

FOURTH POINT.

If by reason of the magnitude of the discrepancy or otherwise, the government is entitled to relief, it must be sought through reformation in equity.

With the doctrine of the supremacy of monuments properly understood and applied, *White vs. Burnley,* 20 How., 235, is an authority directly in point. In that case a grant of one league of land had been so surveyed and patented as to include two leagues, through the fraud or mistake of the surveyor. It was held that the only redress of the government would be in a suit for reformation. It may be argued that in the case at bar, because there is a discrepancy between monuments and distances, relief can be afforded by rejecting the former in favor of the latter, as a mere matter of interpretation. But this, as already pointed out, is precisely what is made impossible by the fact and the conclusive legal intendment, that it was the land inclosed by the monuments, that was intended to be conveyed; and by the fact that if this intention was induced by anterior mistake, the mistake was too remote to be cognizable in the ordinary course of interpretation. It is a mistake such as was held remediable only in equity, in *Lamprey vs. Mead,* 54 Minn.,

290,299. That was a case in which, the government surveyors, misled by the false appearances of a spring freshet, had meandered as a lake, a tract which should have been surveyed as dry land. Applying to the situation, the law of Minnesota, the effect was to clothe the purchaser of a lot abutting upon the supposed lake, with the ownership of the bed to the center of the lake, precisely as though the plat and patent had delineated the side lines of the purchased lot as extending to the center or thread of the lake. Such indeed was exactly the import of the plat and patent when read in conjunction with the law of Minnesota relative to the ownership in fee of the beds of unnavigable lakes. The contention there, was precisely as here, that the mistake of the surveyor was remediable by interpretation because the grant contained specifications of course, distance and quantity which would enable the court to cut the lot off at the meander line, thus awarding to the purchaser, the acres for which he had paid and no more, and lopping off that portion of the tract which by the mistake of the surveyor, had in legal effect, been included in the surveyed tract. The mistake was held remediable only through reformation in equity.

The survey in the case at bar was returned to the surveyor general and by him certified to the land offices as the basis for these patents; the complainant's lots were shown to extend from the north and

east lines of the section to the lake, and with the survey so returned as the basis of the patent, it is not competent for the courts to interfere except at the suit of the United States. From this point of view *Russell vs. Maxwell Land Co.*, 158 U. S., 253, 256-259, and *Cragin vs. Powell*, 128 U. S., 691, seem to be substantially in point.

Gazzam vs. Phillips, 20 How., 372, is also a very suggestive case in this connection. A purchaser of the southwest quarter of a certain section of land was there claiming that the court should by process of interpretation merely, construe his patent to cover the entire southwest quarter of the section as but for the mistake of the surveyors it would have been surveyed and platted; which would give him more acres than belonged to his fraction according to the plat. The lower court held that the "southwest quarter" should be construed to mean and include the land which should have been included in it. This court said:

> "This court is of opinion this ruling cannot be maintained. For conceding, for the sake of argument, that the plat by the surveyor general of this section was made contrary to law, the ground upon which the decision is sought to be maintained, that Etheridge, under the pre-emption act of 1830, was entitled to purchase the whole of the southwest quarter, and to have it surveyed and patented to him, yet it was not so surveyed, nor

did he purchase, nor has he obtained a patent for the same."

Of all the Federal cases, however, *White vs. Blum*, 52 U. S. App., 59, 63, is the most manifestly in point. The grant in that case had been so surveyed as to include an excess of 2000 acres. The contention there as here was that the error should be corrected by the subordination of monuments to distances. It was held that this result could only be obtained by reformation in equity. The case appears to be exactly in point.

The State decisions are to the same effect.

In *Sears vs. Parkers*, 1 Hayw., (N. C.), 126, the patent expressly stated that the land was sold as the confiscated estate of one McCulloch, from which it was evident that the remote intention was to convey only the land which had belonged to McCulloch. Apparently by mistake or design, the boundaries by which the tract was demarkated preparatory to its resale, as confiscated property, had been so extended as to include other adjacent vacant land. (P. 128). Although the confiscated land was in charge of different officers, from the state's general domain, it was held that the patent carried all of the land marked off by the monuments, and that relief if any, must be sought in equity. It will be observed that all of the facilities were present upon the face of the deed, to enable the court to make the desired correction, if it had been

deemed within the sphere of interpretation to override the final and immediate intention of the parties to convey the visibly enclosed land, by reference to conflicting intentions of a remote and inducing character.

Among other cases of similar import are the following:

Fowler vs. Nixon, 7 Heisk., (Tenn.), 719, 725.
Curle vs. Barrell, 2 Sneed, 66.
Pringle vs. Rogers, 193 Pa. St., 94.
Hull vs. Fuller, 7 Vt., 100, 105.
Owens vs. Rains, Hayw., (Tenn.), 106.

The last mentioned case was cited approvingly in *White vs. Burnley*, 20 How., 235, 247.

We do not desire to be understood as conceding that under the circumstances of this case the government, even in a direct suit for reformation, would be entitled to curtail the patented lots as proposed by the defendants. As shown under our fifth and sixth points there appear to be two insuperable objections to such relief in any forum. (a) The government is estopped by the express terms of the statute, from claiming that the monuments inclose more acres than returned by the surveyor (Rev. Stats. Sec. 23-96). (b) As a condition to *having* equity, the Government in such a suit would be required to *do* equity, and its relief would be restricted to compensation at the regular rates for the excessive

acreage. The equitable necessity for some such restriction, constitutes a substantive ground for holding the patent unalterable by interpretation merely.

FIFTH POINT.

The foregoing propositions are also established by the terms of the statute.

We confess our inability to understand upon what theory it is, that defendants argue this case distinguishable in their favor from some of our citations, because this was a statutory survey. From the foundations of the government every one of the foregoing conceptions has been deeply ingrained in the very letter of the statute. The scheme of the legislation has been to subdivide the public domain into townships and sections with lines so visibly marked and inscribed, in ways of which public records are preserved, that the boundaries of each section can be identified upon the ground, and followed by any one familiar with the methods of demarkation, as though each section were enclosed by a fence. (Rev. Stats. Sec. 23, 95).

To remove all possible doubt as to the force of the monuments, and to make it entirely clear that the

government is proposing to deal with each tract as it has been thus segregated by visible lines, and not otherwise, the following further provisions are made:

> "Sec. 2396. The boundaries and contents of the several sections, half-sections and quarter-sections of the public lands shall be ascertained in conformity with the following principles:
>
> "First. All the corners marked in the surveys, returned by the surveyor general, shall be established as the proper corners of sections, which they were *intended* to designate; * * * *
>
> "Second. The boundary lines, actually run and marked in the surveys returned by the surveyor general, shall be established as the proper boundary lines of the sections, or subdivisions, for which they were intended, *and the length of such lines as returned, shall be held and considered as the true length thereof.* * * * *
>
> "Third. Each section or subdivision of section, the contents whereof have been returned by the surveyor general, *shall be held and considered as containing the exact quantity expressed in such return.*"

All this means manifestly, as indeed has been held in every state of the union covered by national surveys, that the corners as actually marked, whether right or wrong, and the lines as actually blazed, whether straight or crooked, and the actual lines of waterways, etc., adopted as monuments by the surveyor,

whether accurately or inaccurately reported, constitute so long as they can be identified the sole evidence of the limits of the several tracts to which they relate. Not only so, but to establish the character of the survey as an arbitrament of courses, distances and quantities, the manifest purpose of the statute was to estop the government on the one hand and purchasers on the other, from being heard to claim as against each other in any forum, or for any form of redress, that the acreage actually inclosed by any set of monuments was in fact either greater or less than the quantity reported by the surveyor. The aim of the statute was thus, to preclude the government and all persons claiming under it, from alleging the discrepancy in distance and acreage, which the defendants as claimants under the government, are here putting forward as the sole foundation of their claim. We are not denying that the statute might be held inapplicable to a discrepancy brought about by fraudulent collusion between a surveyor and a proposed purchaser. But by nothing short of such collusion can the force of the statute be broken. The government causes these surveys to be made by sworn employees of its own choosing, and has wisely and deliberately adopted the traditional policy of binding and being bound by the demarkations actually made by them. So that by the very terms of the statute, the government, even in a suit for reformation could not be heard to allege the discrepancy

in acreage which would be its only pretext for asking relief.

It would be a wanton waste of labor to enter upon the citation of the multitude of cases in which this statutory subordination of courses, distances and quantities to the visible monuments of the survey, has been enforced. In view of its especial interest, we cite a single case, that of Ogilvie vs. Copeland, 145 Ill., 98, 105, in which the distance between the monuments was found to be only half as great as returned by the surveyor. The court said:

> "The government field notes give the distances from the northwest corner of section four, south, to the quarter corner on the west line of the section at forty chains, and from that corner to the southwest corner of the section forty chains; but evidence was given, on behalf of appellee, tending to show that the monument made by the government surveyors when surveying the section, at the quarter corner on the west side of the section, was only twenty chains and fifty-two links. If that is the fact, then so much of the field notes as assume to express the length of this line and the government plat of the survey is inaccurate. The field notes and plat are assumed to be correct, until the contrary is shown, *and they are important evidence in ascertaining where monuments are located;* but if the location of the monument is clearly shown by other evidence to be at a distance different than that given in the field notes and plat, they must give way."

SIXTH POINT.

The equities of the case.

(a). In the case of a water frontage as a monument, it is not only by its greater certainty, but by its greater materiality, that the monument is supported. The court will take judicial notice that the water boundary adds to the market value of a tract by augmenting its usefulness for almost any purpose, and will presume that it was one of the inducements to the purchase.

> "Generally speaking, it is the particular intention of the purchaser to acquire the land lying on the stream called for, as being more valuable than other land."
>
> Marshall, C. J., in Newson vs. Prior's Lessee, 7 Wheat., 7.
> County of St. Clair vs. Lovingston, 23 Wal., 46, 65.

(b). Experience shows that it is ordinarily only after the lapse of many years after the patenting of apparently riparian tracts, that interlopers come in and endeavor to insinuate themselves between the original purchaser and his waterway. The annals of

the courts so disclose. Such controversies do not arise until the original purchaser has for many years exercised ownership over the land, borne its burdens of taxation and otherwise, and in good faith built up expectations of enjoyment, the dissipation of which comports as little with good law as with good morals. It is unnecessary for us to remind the court how many of the most fundamental rules of our law, including the right of property itself, are traceable to the obvious injustice and impropriety of disappointing expectations of enjoyment naturally and reasonably formed, and long cherished. The men who upon technical pretexts seek thus to undermine titles unchallenged for a generation, by forcing themselves in between the government and its grantees, although they may masquerade under the denomination of settlers, belong unmistakably to a class of *"prowling speculators"* intent, not upon making a living by sweat of the brow, but upon making a fortune by the exercise of their wits. They appear upon the scene after the value of the property has been enhanced greatly beyond the price at the date of the patent,—often through the well directed industry or enterprise of the patentee.

It is a consideration of the first magnitude that the pronounced tendency of the views contended for by the defendants, particularly in connection with the meander line cases, is to place a premium upon cunning

and craft, to encourage the dissection of titles, to foment strife, and to disappoint natural and just expectations. The doctrines maintained by the complainant have a tendency, the opposite of all this.

(c). The positions of the complainant are powerfully supported by the principle of reciprocity. Every purchaser of land from the government, takes the risk of getting less land than the supposed acreage for which he pays, through carelessness in the survey or in the returns of the surveyor. While this is not peculiar to purchasers of riparian tracts, the hazard assumes an acute form in such cases.. Such carelessness or fraud as characterized the survey of this township, was as likely to leave these lots with only a fourth of their ostensible acreage, as to increase their acreage fourfold. Had three-fourths of each lot been in the water the loss would have fallen irrevocably upon the patentees. It will be recalled that very many of the rules of the law rest bodily upon this principle of reciprocity. It is for example, the most cogent of the reasons assigned for the doctrine of accretion.

(d). To allow the government to reclaim this land would be especially oppressive, since with full information, through sworn statements, that the interior of the township had not been actually surveyed, the Interior Department deliberately declined to have the survey investigated or corrected. (Finding 13, p. 60

and pp. 45-49 of Record). The government by its responsible representative, after being so notified, was content to accept the survey, and to palm off its lands upon innocent purchasers, upon the faith of the representations embalmed in the field notes and plat of the survey as returned. With what propriety can it now come forward after a score of years, during which values and industrial conditions have been entirely transformed, and seek to make the correction which from the standpoint of ordinary good faith and fair dealing, it should have made if ever, before putting these lands upon the market?

(e). It appears to have been a matter of the utmost notoriety, that nearly all the public land surveys in the early history of the country erred in the favor of the settler or purchaser. There appears, however, always to have prevailed in popular as well as in executive and judicial circles, a sentiment that as the settler or purchaser necessarily assumed the hazard of finding less land inclosed by his monuments than reported by the surveyor, he might reasonably claim the benefit in case of an excess. The reasonableness of this view was asserted by this court in the early case of *Taylor vs. Brown*, 5 Cranch, 234, 249-252. A patentee of land was there charged by the court as trustee for one claiming under a prior survey, despite the fact that such survey had inclosed three thousand acres upon a warrant for two thousand. It was held

that to curtail the survey, *"would be unequal and un just, inasmuch as a survey which is too small cannot be enlarged."* Similar views have frequently been expressed in state decisions.

Beckly vs. Bryan, Sneed's Ky. Cas. 107.
Johnson vs. Buffington, 2 Wash. (Va.), 116.

In *Houston vs. Pillow*, 1 Yerg., 481, 488, it was remarked by Catron, J., that he knew of no instance anywhere, in which a state had sought to recover patented lands on account of excessive acreage enclosed by the survey. Forty years later, as a member of this court, in the opinion in *White vs. Burnley*, 20 How., 235, 247, he reiterated the remark. So far as we know it remains true to this day, although the right of the state to some form of relief in cases of extreme discrepancy, has been generally conceded by the courts, *arguendo*. The circumstance attests the existence of a deeply seated sentiment that the state should stand by the results of the arbitrament of distance and quantity, accomplished through the survey of her sw rn officials. As a consequence, however, we are left without authority as to the kind or measure of relief which equity should afford the government in such instances. In principle, it seems clear, that under circumstances approximating these of the case at bar, the most that the government could expect to

receive at the hands of a court of equity, would be payment for the excess acreage at the rate per acre originally paid by the patentee. As the fault was that of the government's official ,and as the government would be thereby indemnified, any larger measure of relief would be oppressive.

Lindsay vs. Hawes, 2 Black, 554, 560, 561.

SEVENTH POINT.

Complainants are not chargeable with notice of fraud on the part of the surveyor, or of the discrepancy in the acreage; nor if they are, would their rights be affected.

There is nothing to indicate that either complainants, or their intermediate predecessors under the patentees, examined the premises before purchase, or had any knowledge of the excessive acreage enclosed by the monuments.

The supremacy of the monuments does not rest upon any assumption that they have been seen by the grantee.

Anderson vs. Richardson, 92 Cal., 623.

This principle was involved also in the case of *Land Co. vs. Saunders,* 103 U. S., 316, 322. It appeared in that case that the side line of Hart's location, which was held to constitute a monument, had never been seen by anybody, or in any manner definitely located, and could be located only by recourse to the courses and distances of the Hart grant.

The contention made by defendants in this regard would have invalidated the patents in all the cases hereinbefore cited, in which large excesses of acreage were involved, and in which nevertheless, the monuments were sustained.

Thus in *Newsom vs. Prior's Lessee,* 7 Wheat., 7, the patentee would have been chargeable with notice of an excess of eighteen hundred acres; and in *Mitchell vs. Smale,* 140 U. S., 46, would have been chargeable with notice that the lot contained seven-fold the acreage reported by the surveyor.

Every one, indeed, of the foregoing decisions in which the monuments have been sustained in cases of large discrepancy, must have been ruled otherwise, were this contention of the defendants sound.

The purchaser from the government, of these lots, if cognizant of the discrepancy, would still be justified in assuming that upon the general law of the subject, as well as by force of the terms of the statute, the government would be estopped to claim the excess, just as in the case of the deficiency of acreage, he would be

estopped from claiming relief. If such a purchaser had taken pains to investigate, he would have found from the public records, as already pointed out, that the government with full information of the absence of actual measurements by the surveyor, had elected to abide by his return, and it would not be incumbent upon him to undertake to determine whether the discrepancies about the shore of this lake were in fact the result of fraud on the part of the surveyor or the result of accident, forgetfulness or some form of carelessness. Nothing short of actual collusion or "evidence that the grantee participated in the matter" would suffice to impair his rights.

White vs. Burnley, 28 How., 235, 247.

EIGHTH POINT.

That the lots platted as abutting upon the lake, will overlap one another if recognized as extending to the actual shore, and that a few of them will not reach the lake without a slight deflection from due course, are facts which in no way concern either the government or the defendants; nor do they present any legal difficulty.

Had the discrepancy in the location of the lake shore, been brought about by gradual reliction or by

alluvion, the distribution of the relicted or newly formed belt of land, would have been easily made upon familiar principles. While there is not absolute uniformity in the methods adopted by the courts for so deflecting and readjusting the side lines of adjacent tracts as to effect an equitable apportionment of flats, shallows, and relicted lands, equality is the mark at which all courts aim, each adopting the particular basis of apportionment which it supposes will best subserve that end. In all the methods, equality is the acknowledge principle, with whatever variation of detail it may be worked out. If this were a case of reliction, or alluvion, and the government or the defendants, claiming the controverted belt, should assign as the reason for their claim, that the law is incapable of apportioning the land among the originally abutting owners, so that it was necessarily left as no man's land, the suggestion would be esteemed notable only for its risibility. It is not a wit less so here. If the platted abutters are entitled to this land, the mutual impingements of their respective tracts, are ideal instances of such conflicting interests as it is the normal function of the law to co-ordinate. The question presented is merely what kind of apportionment will, in such a situation, insure equality; and the law has never yet acknowledged its incapacity to determine in any of the relations of life, what shall be deemed to constitute equality.

It is said, however, that plaintiff's lot 3, though extended indefinitely southward, would not strike the lake unless its side lines were deflected slightly to the east; and that plaintiff's lots 5 and 6, would not reach the lake within the limits of section 4, unless their side lines were slightly deflected toward the south. But the lake is called for as the boundary of each of these lots, and the courses reported by the surveyor are no better able to compete with the monuments than the distances are, nor are courses and distances and quantities combined, of any more force as against the monuments than any one of them standing alone. As pointed out on the last few pages of this brief, the defendants misconstrue the decision in *French-Glenn Live Stock Company vs Springer*, 185 U. S., 47, if they suppose it to imply that courses are any more forceful than distances, in competition with monuments. It is doubtful whether the government has ever surveyed a section of land, whose marked boundaries conformed to the surveyor's return, with respect to either course or distance. Is it not an every day occurrence, to recognize the aberrant courses of the curved or crooked lines actually blazed by the government surveyor, as superior to the straight lines called for by the regulations and the field notes?

Could any owner of lot 8, for example, while claiming to reach the lake as his monument, despite the surveyor's erroneous specification of distance, be heard

to argue that an owner of lot 3, should be barred from reaching the lake as *his* monument, by force of the surveyor's erroneous specifications of courses. The latter are no better able than the former to stand between an owner and his monument.

The only difference in this connection between the position of lot 8 and that of lot 3, is that for *deflecting* the side lines of the former as they cross the controverted belt of land, there is but one reason, to-wit; that the actual shore of the lake may be distributed rateably among those who, as the lake was pictured by the surveyor, appeared to be abutters upon it; whereas in the case of lot 3, there exists concurrently with this reason, another, viz.: that lot 3 may find its southern terminus and boundary upon the shore of the lake as a monument, conformably to the representations of the plat.

The surveyor was derelict in estimating instead of measuring the distances and courses to Cedar Island Lake, and the patentees of all lots which *by reason of this dereliction* were accredited with a boundary upon the lake, are thereby thrown into a legal relationship with one another, which not only enables but constrains the court to so establish the side lines of their several tracts across the belt of excess acreage, that upon the contracted shore of the actual lake, each shall have the same *proportionate* frontage that it apparently had upon the larger shore pictured upon the plat.

It is important to distinguish a case like this, where

through common subjection of the parties to processes of alluvion, or reliction or to carelessness or fraud in a surveyor, relations are established which justify and make feasible a deflection of courses, from another class of cases in which either an extension of distances, or a deflection of courses, in order to reach a monument, might be made impossible by the vested rights of third parties in adjacent tracts.

For the purposes of the questions that here arise between the plaintiff patentees, and those claiming subsequently under the government or its land laws, it seems to be clearly immaterial whether the lands which by the plat appeared to abut upon the lake in Sections 2, 3, 4, 9, 10 and 11 were all entered at one time by one individual or at different times by different parties. *The plat is an entirety, and each individual purchased in the light of and subject to all the representations which appeared upon its face*, so that the purchaser of each abutting lot appearing to front upon the lake acquired a right to such frontage *no less as against the purchasers* of the other lots, than as against the government.

If indeed, the surveyor, instead of being guilty of a single dereliction deranging all his distances to the lake, had returned accurate measurements to portions of its shore, it would seem clear that those abutters whose lots were not implicated in the discrepancy would not have their frontage curtailed for the relief of those

whose lots were so implicated. The shrinkage of water front must be borne by those who stand related to the error which has necessitated the apportionment, and who are beneficiaries of the increased acreage. This apportionment of the controverted belt among the platted abutters, seems, however, to be so remote from any interest or concern of the defendants as to make its further dicussion inappropriate here.

NINTH POINT.

It is not a material circumstance that the government contractor and deputy surveyor to whom the government confided the sub-division of this township may have fraudently neglected to perform his duty.

It is conceded that the report of survey and field notes which were returned to the surveyor general were upon their face perfect, with nothing about them to suggest that they were fictitious. There is no attempt to prove knowledge on the part of the plaintiff or its grantors that the survey had not been regularly made. No attempt is made to impeach the good faith of any one claiming these lands under the government.

The lands were entered or purchased from the government upon its representation in substance that they had been duly surveyed, and that the plat which was on file in the Local Land Office was a correct representation of such survey. What means had the purchaser under the government of knowing the contrary?

Any other rule would involve titles in an intolerable uncertainty. Any failure of a surveyor to make actual measurements is in the nature of a fraud upon the parties interested. A failure to measure a single section line, is as truly a fraud as the failure to measure any of the section lines within a township. From the nature of the case, the principal evidence of the failure to measure, must ordinarily consist in the magnitude of the discrepancy between the actual and the reported distances between monuments. The supremacy of the monuments, if it could be undermined by the fraud or gross negligence of the surveyor, would depend in every case upon the unconstrained judgment of a jury, as to whether under all the circumstances of the particular case, the discrepancy between the actual and reported distances should be regarded as of sufficient magnitude to justify the inference that the surveyor estimated instead of measuring his distances.

The defendants while claiming that patents issued for lands which have not been actually surveyed are illegal and void, when they come to apply the proposi-

tion to the case in hand, seek both modestly and judiciously to restrict it to those portions of the actually unsurveyed lands in this township which encircle the immediate shores of the lake, and which are now occupied by themselves. They boldly claim that not an acre of land in the entire township was ever surveyed, yet they generously concede that the patents are all probably unassailable, except so far as they effect the particular strip which they desire to appropriate.

It would, of course, be an intolerable doctrine, that after the government has filed field notes and compiled therefrom a plat of an ostensible survey of a township, and upon the strength of such ostensible survey and plat has sold the lands purported to be covered by it, it should still be at liberty to upset the titles which it has thus created, by claiming and proving that no survey had in fact been made. Any such doctrine would not only overthrow all the titles in this township, but would jeopardize titles generally throughout the newer portions of the country. The attempt of defendants to discriminate in this regard against the belt of land immediately encircling the lake, is obviously fallacious. The only cases which they cite in support of the contention that patents are void if issued for lands not actually surveyed, are such as *Horne vs. Smith*, 159 U. S., 40 and *Niles vs. Cedar Point Club*, 85 Fed., 45, in both of which cases it was held that when interpreted, as they must be, in the

light of the physical characteristics of the land to which they relate, the field notes and plat themselves imported a termination of the survey at a particular natural monument;—in the former case at a bayou, and in the latter upon the line of a marsh. Neither case goes to the length of holding that the government after disposing of lands upon the strength of an ostensible survey and plat can resume them again upon the claim that the survey was fictitious. Each case rests squarely upon the proposition, that when read alongside of the physical features of the land platted, the field notes and plat imported a termination of the survey at a certain well defined natural boundary or monument. All that we ask in this case, is what the court awarded in each of those cases, to-wit, that the survey of our Section 4 may be held to extend to the natural monument upon which it *purports* to terminate, to-wit, Cedar Island Lake.

The point has moreover been so repeatedly adjudged that it cannot be regarded as debatable. In *M'Iver's Lessee vs. Walker*, 9 Cranch, 173, it is noted by the court, that no survey was ever made. (p. 173). For a chain of eleven surveys of five thousand acres each, only one starting point was marked, and no further measurements made. Yet a creek, although not referred to in the patent, or the certificate of survey, and although not occupying the position of a boundary, was, because delineated upon the plat, held

to be a natural monument to which courses and distances must be subordinated.

It was again so held in *Newsom vs Pryor's Lessee,* 7 Wheat., 7, where as already noted, the discrepancy in distance was more than a mile. In discussion of this subject Chief Justice Marshall said:

> "It is apparent that a survey was not made in fact, but that, after marking a beginning corner, the surveyor made out and returned a plat, which he supposed would comprehend the land intended to be acquired. It is now too late to question the validity of grants made on such plats and cirtificates of survey. From the extraordinary circumstances of the country, they were frequent, and, in consequence of those circumstances, have received the sanction of courts. An immense number of titles, believed to be perfectly secure, depend upon the maintenance of such grants. The extent of mischief which would result from unsettling the principle, cannot be perceived; and is certainly too great now to be encountered. The patent, therefore, must be considered as if the survey had been actually made."

In *White vs. Burnley,* 20 How., 235, it is remarked that "probably no actual survey was made on the ground;" yet the patent was held to have passed the two leagues of land wrongfully enclosed by the surveyor, although only one league was called for by the grant. The case seems to be directly in point, that

all the land actually covered by a survey *as returned,* —or rather all the land *purporting* to have been so covered, will pass by the patent whether there has been an actual survey or not.

In *Chinoweth vs. Haskell's Lessee,* 3 Pet., 92, 94, 96, 98, also, it was conceded that the monument must prevail, although no actual survey had been made.

To the same effect is *Blake vs. Doherty,* 5 Wheat., 359, where by Chief Justice Marshall, it was said: "The grant purports to have been made upon an actual survey; and the non-existence of that survey though it may increase the difficulty of ascertaining the land granted, does not change the face of the instrument." And it was held that search must be made for the monuments as though the survey had been made.

Upon this subject, it seems difficult to add anything to what is so effectively said by Lochren, J., in *Murphy vs. Kirwan,* 103 Fed., 104, 107, where he expressed himself as follows:

> "In the surveying, platting, offering for sale, of lands, the government deals as proprietor. The transactions are matters of business; and as between the government and its patentees, or the purchasers from such patentees, all the rules applicable to private ownership and private sales attach, as in the case of an individual vendor. The government, through its agents and employes, makes the surveys and prepares the plats according

to which it offers for sale and sells its lands. If its agents and employes are negligent or unfaithful, and loss to the government results, it cannot shift that loss upon an innocent purchaser, who has bought and received title upon the representations of the plats prepared by the government, and according to which the land is offered for sale, and the sales made, and the title to the lands conveyed by patent. * * * * The government, as against purchasers in good faith, like the complainants, is bound by its own plat, in accordance with which it has sold and conveyed all the land in that township."

The reversal of that case in this court was upon other grounds.

Kirwan vs. Murphy, 189 U. S., 35.

There are many state decisions laying down the same rule. In fact nearly all of the cases heretofore cited, involving large discrepancies between distances and quantities on the one hand and monuments on the other, are explicable only upon the theory that the surveyor substituted estimates for measurements.

The absence of survey expressly appeared in *Simm's Lessee vs. Baker,* Cooke (Tenn.), 146, and in *Singleton vs. Whiteside,* 5 Yerg. at p. 36, and in *Whiteside vs. Singleton,* Meigs (Tenn.), 207, 218, 219.

Also, either expressly, or by necessary inference, in the following cases:

Fowler vs. Nixon, 7 Heisk, 719, 724.
Sturgeon vs. Floyd, 3 Rich., 80.
Stafford vs. Qing, 30 Texas, 257.
Phillipps vs. Ayers, 45 Texas, 605.
Jones vs. Burget, 46 Texas, 292.

TENTH POINT.

Meander lines in their relation to the rule of monumental supremacy.

In the case at bar, the implement with which defendants propose to cut off plaintiff's lots half a mile from the lake upon which they appear to abut, is the meander line returned by the surveyor as correctly delineating the lake shore. The proposition is to invoke and utilize the meander line as a boundary, to stand in antagonism to the lake shore, and as a substitute for it.

They propose a departure from the doctrine, long ago arrived at as a simple application of the supremacy of monuments over courses and distances, that a meander line is never a boundary line, since the real boundary is always the water. The words "along

the water," are implied in every specification of course and distance in a meander line, as unmistakably as the words "along the marked line," are implied in every specification of course and distance in connection with a township or section line. The water line which the surveyor *adopts*, is as binding as the timber line that he blazes. Moreover, however widely the courses of the meander line may seem to carry it from the shore line, in its transit across a particular section, it is definitely anchored to the shore at each side of the section. Thus by reference to page 36 of Record, it will be seen that the meander line across section four begins and ends at "corners," which by reference to pages 32 and 35 are reported to consist of two posts set respectively on the "north shore" and "west shore" of the lake, at the points of its intersection with the east and south lines of the section. This was required by the regulations. (Public Domain, 590).

From this point of view particularly, we are at a loss to understand, upon what theory it is, that our lots are claimed to be cut off by a meander line intersecting the east and south lines of the section over half a mile or more from the lake, when that same line is, in terms, described by the surveyor as striking into section four at a point *on the lake shore* which he has marked by a post, and as leaving it, at another point on the lake shore, similarly marked.

It should be borne in mind that there is nothing in the statute calling for a survey of the meanders of a shore; that the intention of the statute was to adopt the shore line as a natural boundary; and that confessedly the surveyor's approximations to its courses and distances, have no other end in view than to inform the land officers of the acreage to be charged for. This fugitive character of the so-called meander line, is further attested by the fact that no provision is made for corners, or for any kind of artificial marks, or monuments in connection with it. Its only monuments other than the shore itself, are the fractional section corner posts which mark the termination upon the shore of the intersecting section lines. But if it were intended as a boundary line, a post or other monument would be provided for the marking of each point at which there is a change of course; such being one of the elementary rules of the surveyor's art. It was the absence of such monuments to mark the several changes of course that was held to characterize such a line as fugitive, in the interesting and well considered case of *Bruce vs. Taylor*, 2 J. J. Marshall, 160, 161.

In order to locate the meander line more than half a mile from the lake, the proposition of defendants is, not only to ignore the implied description in the plat and field notes of every link in the meander line as running "along the lake shore," but to reject from the description of it in the field notes, the above men-

tioned express call for the lake shore as a monument, at the point where it enters section 4, and at the point where it leaves it. If those two monumental calls which as above shown, are expressly made in the field notes, are to be respected, the intervening courses and distances of the meander line, across section 4 as reported in the field notes, become so grossly incongruous and indeed so impossible as to fall of their own weight. So that whether the general subject be viewed in connection with the south and east lines of section 4, as they purport to carry complainants' lots to the lake as a monument, or in connection with the meander line which is expressly conditioned to enter and leave section 4 at its points of intersection with the lake shore, and is impliedly conditioned to follow the lake shore across the section, the result is the same.

From a review of the authorities, it will appear that this court and the courts generally, have administered the rule in favor of monuments, with as firm a hand, against the courses and distances of meander lines, as against those of any other lines; which means only, that it has accorded to waterways the monumental force universally accorded to other visible marks or objects made or adopted as boundaries.

St. Paul R. R. Co. vs. Schurmeier, 7 Wal., 272, 286, 287, involved the ownership of a tract of land, part of the time an island, lying between the meander line and

the actual low water mark of the Mississippi River. The court said:

> "Meander lines are run in surveying fractional portions of the public lands bordering upon navigable rivers, *not as boundaries of the tract, but for the purpose of defining the sinuosities of the banks of the stream, and as the means of ascertaining the quantity of the land in the fraction subject to sale, and which is to be paid for by the purchaser.*
>
> "In preparing the official plat from the field notes, the meander line is *represented* as the border line of the stream, and shows, to a demonstration, that the water course ,and not the meander line, as actually run on the land, is the boundary."

Hardin vs. Jordan, 140 U. S., 371, was an action of ejectment in respect to premises lying partly between the meander line and the shore, of a small lake, and partly in the bed of the lake. It was held that the plaintiff's lots, rendered fractional by the meandered lake, extended beyond the meander line, and to the center of the lake. The court said:

> "The meander lines run along or near the margin of such waters are run *for the purpose of ascertaining the exact quantity of upland to be charged for, and not for the purpose of limiting the title of the grantee to such meander lines.* It has frequently been held both by the Federal and State courts that such meander lines *are intended for the purpose of bounding and abutting*

the lands granted, upon the waters whose margins are thus meandered; and that the waters themselves constitute the real boundary."

The court quotes with approval from *Middleton vs. Pritchard,* 3 Scam., 510:

"Where the government has not reserved any right or interest that might pass by the grant, nor done by any act showing an intention of reservation, such as platting or surveying, *we must construe its grant most favorably for the grantee, and that it intended all that might pass by it.*"

The court said further:

"*The plat of the lake* and the land surrounding it, referred to in the patent granted to Holbrook (plaintiff's ancestor) *exhibits the fractional section surrounding the lake as immediately bordering upon it;* and *this,* as shown by the authorities cited, *constitutes the lake itself the real boundary of the land, without regard to the meander line.*"

A similar case was that of *Mitchell vs Smale,* 140 U. S., 406, reaffirming the decision of *Hardin vs. Jordin, supra,* and applying the law, as there declared, to the case of a ridge or strip of land extending out into the lake from the plaintiff's fractional quarter section or lot, indicated on the plat as bordering the lake. This fractional subdivision was shown on the

plat and was patented as containing four and a half acres. The ridge in question projected into the lake and beyond the meander line, 220 rods, or about two-thirds of a mile, and was 28 rods wide at its base end and of varying widths elsewhere; and embraced an area of some twenty-five acres; or about six times the area of the lot, as shown in the survey as returned and platted. It was held that the patent of the fractional subdivision conveyed the ridge in question and that a subsequent patent of the ridge (under which defendant claimed title) was of no effect. The court, speaking of the government surveys and plats, said:

> "Our general views with regard to the effect of patents granted for lands around the margin of a lake *and shown by the plat referred to therein, to bind on the lake*, were expressed in the preceding case of *Hardin vs. Jordan*, and need not be repeated here. We think it a great hardship, and one not to be endured, for the government officers to make new surveys and maps of the bodies of such lakes after selling and granting the *lands bordering thereon, or represented so to be.* It is nothing more nor less than taking from the first grantee a most valuable, and often the most valuable part of his grant. Plenty of speculators will always be found as such property increases in value to enter it and deprive the proper owner of its enjoyment. The patents issued refer to this plat for identification of the lots conveyed, and are equivalent to, and have the legal effect of a declaration that they extend to and are bounded

by the lake or stream. Such lake or stream itself, as a natural object or monument, is virtually and truly one of the calls of the description or boundary of the premises conveyed."

At page 414, the court speaking by Bradley, J., continued:

> "The existence of such projecting tongue is entirely consistent with the water or lake, being the natural boundary of the plaintiff's land, which would include the said projection if necessary in order to reach the said boundary. *It has been decided again and again that the meander line is not a boundary, but that the body of water whose margin is meandered is the true boundary.*"

We confidently submit that in thus expressing itself the court spoke adviseldy. The principle that has been adjudicated over and over again, is that a so-called meander line is not run for any purpose of boundary, and does not in any manner enter into the description of patented tracts. It is run and recorded for purposes *alien* to those of boundary and description. The case is not one of conflict between superior and inferior descriptions or elements of description; for the meander line is according to these reiterated determinations entirely destitute of boundary line and descriptive qualities. If the court of last resort had not explained why a meander line

cannot successfully compete with the water line which it represents the door might have been open for such an argument as is made by counsel for respondents, that the water line is the true boundary, only under ordinary circumstances or as a general rule, but against every contention of this kind the door is shut by the settled doctrine that the meander line is run for other purposes than boundary and description, and that it does not partake of the nature of either.

It is doubtful whether the heart of this general subject has ever been more deeply penetrated than it was by Chief Justice Wilson of the Minnesota Court, when in *Schurmeier vs. St. Paul R. R. Co.,* 10 Minn., (Gil.) 59, a case, the facts of which are too familiar to require recitation, he declared, "There is no such thing as a meander line in such case, distinct and and separate from the line of the river." For every legal purpose this is literally true. A meander line is only an *attempt* to trace roughly and approximately, upon the ground, in the field notes and upon the plat, an actual water line. Whenever and so far as a so-called meaner line, as it is traced upon the ground, recorded in the field notes, or delineated upon the plat, departs from the actual water line, it fades out as rapidly as it is delineated, for every conceivable legal purpose, except the fixation of the purchase price. It is a mere *attempt* to roughly locate and describe a natural boundary, and even this *attempt* is made as

already noticed, not for any purpose of boundary or limitation, but merely as a step in the calculation of purchase price. The so-called line is neither more nor less forceful than it would be if under the regulations of the department, no other minute or trace of it were required to be preserved in the field notes than a mere memorandum of the acreage, thus ascertained, of each riparian lot. Interesting illustrations of the accuracy of Judge Wilson's position are found in such cases as *Sizor vs. Logansport*, 151 Ind., 626, 628, and *Boorman vs. Sunnucks*, 42 Wis., 233, holding that even where the meander line is referred to *eo nomine* as a boundary line, the reference is to the actual water line.

Everson vs. City of Waseca, 44 Minn., 247, involved the question whether a patent of a government lot appearing on the plat to be bounded by a lake, conveyed title to the shore of the lake, notwithstanding the fact that several acres of dry land lay between the meander line and the actual lake shore. It was held that the lake, and not the meander line, constituted the boundary of the patented lot. The case was decided squarely upon the principles that the so-called meander line is not in any sense a boundary line, and that the estimated acreage of a patented lot cannot, upon the question of its limits, be brought into competition with the natural boundaries of the patented tract.

The court said:

"The purchaser from the United States purchased lot 2, the established northern boundary of which was the lake. Whenever the surveyed meander line failed to conform to the shore of the lake, the latter—the fixed, physical boundary or monument—is to prevail, and the surveyed line must be disregarded. The general familiar rule of law is applicable in such cases. *While, therefore, the price of the land sold by the government was computed upon the assumption that the meander line and boundary line (the shore of the lake) were identical, that does not affect the extent of the grant made* by the patent conveying lot 2. The lake, and not the meander line, was the fixed boundary of the land conveyed. No conditions exist which can create an estoppel against the purchaser, and make the real physical boundary, existing in fact and shown by the government survey and plat as the boundary, to yield to the surveyed line."

Lamprey vs. State, 52 Minn., 181, did not directly involve the question in hand, but the words in which Mitchell, J., in delivering the opinion of the court expressed himself *arguendo* are well worthy of quotation. They are as follows:

"There are certain matters which are so well settled that they may be summarily disposed of at the outset. Without troubling ourselves to consider what were the rights of the United States

in these waters before they conveyed the lands bordering on them, it is well settled that having disposed of lands bordering on the meandered lake by patent, without reservation or restriction, they have nothing left to convey, * * * *and also that the meander line is not a boundary,* but that the water whose body is meandered is the true boundary, whether the meander line in fact coincides with the shore or not."

In *Forsyth vs. Smale,* Fed. Cas. No. 4950, the question was before Judge Drummond in a case involving the title to a point of land of substantial proportions extending beyond the meander line into a lake. Applying the principle of the Schurmeier case, that meander lines are not run or to be used as boundary lines, he held the patented tract not to have been limited by the meander line.

It was again so held, in the late well considered case of *Schlosser vs. Crookshank,* 96 Iowa, 424, (65 N. W. R., 344), which in its essential features was not distinguishable from this case. Several cases were considered together. The facts in one of the cases only need to be stated. The plaintiff, Schlossor, claimed title to lots 2 and 3 of a certain section under a patent, in the usual form, conveying the lots with reference to the plat of the survey. The plat showed the lots as bounded by a meandered lake two miles wide and three miles long, (the banks of which

were clearly defined); and showed the area of the specified lots as being 99 acres; but the meander line, which touched the shores of the lake in only one or two places throughout its whole extent around the lake, and was never coincident with the shore line, was so far from the lake that it left 100 acres of land between the meander line of the plaintiff's lots and the shore of the lake; an amount exceeding the area of the lots as embraced within the meander line. Schlosser's meander line did not touch the shore of the lake at all. A part of the land was high, dry, tillable land, some of it meadow or pasture land and some low and unfit for cultivation. Nearly all of the land was never overflowed. The defendants had entered upon this land for the purpose of securing it for a government homestead. It thus appears that the case was almost exactly like that at bar. This was an action by one who had succeeded to the title of the patentee to establish his ownership, and to enjoin the defendants from entering and using it. The sole question was whether the patent conveyed the land between the meander line and the lake. It was held that it did. The court said: (pp. 420-421).

> "In these cases there was a body of water to meander. There was a meander line run which appears on the plat of the government survey as coincident with the line of the lake. The plat does not show any reservation, or attempted reser-

vation of the land in controversy in these cases, or any of it. It would appear then that the government *intended* when it patented the lands to convey to the purchaser the land to the lake, not merely to the meander line * * * * It can not be said that evidence which merely shows that the meander line was not, when the government survey was made, coincident with the line of the lake, and that there was then a body of land lying between such line and the high water mark of the lake, will overcome the presumption (that the government intended to convey to the lake). To overcome such presumption would require some evidence to show that the grantor, the general government, had done, or attempted to do, some act inconsistent with the presumption; such as having *previously* surveyed the land in dispute as government land, or conveyed it to others than the plaintiff's remote grantors, or in some manner making a claim to the disputed ground. * * * The general rule *applicable also to the Federal Government,* is that all grants are to be construed most strictly against the grantors, and reservations will not be implied. *Butler vs. R. R. Co.,* 85 Mich., 246; *Chandos vs. Meek,* 77 Wis., 573; 146 N. W. R., 803.

"The statement of the number of acres in these patents in no way limits the extent of the grant. *To so hold would in effect be holding that the meander line was a boundary line, which, as we have seen, is not the case.* The riparian holder of the patent takes all the land to the shore of the lake, though he may thereby obtain a larger acreage than his patent calls for."

So in *Menasha, etc., Co. vs. Lawson,* 70 Wis., 600, where there was a discrepancy of some three hundred and twenty feet between the meander line and the shore, the court said:

> "The foregoing cases we think clearly establish the rule that on all sales of land by the United States of lots which are bounded by a river, the purchaser takes to the shore or bank of the river, and the meander line *not being a boundary or in any way referred to as such in the conveyance* cannot have any effect in giving direction to the lines of the lot as designated on the government plat."

So in *Coburn vs. San Mateo County,* 75 Fed., 520, 530, where the same principle was applied to a survey of the seaward boundary of a Mexican grant.

The question presented by the case at bar, is identical with that involved in the case of *Murphy vs. Kirwin,* which involved the title to other portions of this same belt of land lying between Cedar Island Lake and its meander line.

Kirwan vs. Murphy, 83 Fed., 275, (C. C. A.)
Murphy vs. Kirwan, 103 Fed., 104.
Kirwan vs. Murphy, 109 Fed., 354, (C. C. A.)

The plaintiffs in the Murphy case are the owners of all the lands which by Exhibit "B" of this record

are shown to abut upon Cedar Island Lake, except the four lots owned by the plaintiff in the case at bar, and except the tract lying at the southeast corner of the lake and shown as lots 4, 5 and 6 of Section 2, and lots 1 and 2 of Section 11. (See 83 Fed., 276). In principle the two cases are identical. There were some affirmative proofs in the Murphy case that the lands had been entered by the patentees in actual reliance upon the water frontage disclosed by the plat. Such proofs were of course unnecessary, as it is conceded by all courts dealing with situations of this kind that presumptively a water boundary is of substantial value and is relied upon where noted upon the plat with reference to which the entry or purchase is made. Thus in *Newsom vs. Pryor's Lessee,* 7 Wheat., at page 10, it is said by Chief Justice Marshall:

> "Generally speaking it is the particular intention of the purchaser to acquire the land lying on the stream called for as being more valuable than other land."

And this presumptive value of and reliance upon the water frontage he assigns as a substantive reason for according superiority to such a natural monument over courses and distances, and over artificial monuments.

So in *Lamprey vs. State,* 52 Minn., at p. 197, it is said by Mitchell, J.:

"Owners of lands bordering on inland lakes have often bought with reference to access to the water, which usually constitutes an important element in the value and desirability of the land. If the rule contended for by the appellants is to prevail, it would simply open the door for prowling speculators to step in and acquire title from the state to any relictions produced in the course of time by the recession of the water, and thus deprive the owner of the original shore estate of all riparian rights, including that of access to the water."

This language was used with reference to a case of reliction, but it is quite as much in point for the purposes now in hand, and indeed, serves to remind us that the law of reliction and accretion rests largely upon this *presumption* that the water frontage is an element of value which enters into the purchase and purchase price of every tract which is represented to the purchaser as being riparian.

In principle, the question presented by the case at bar, is closely analogous to that which was involved in *Nicolin vs. Schneiderhan*, 37 Minn., 63. That was a case in which a city lot was delineated upon the recorded plat as extending from a street on one end to a creek on the other, just as our government lots were delineated upon the government plat as extending from the blazed town line to the lake. In the Nicolin case the side lines of the lot in question were described as

thirty-five feet and thirty-three feet respectively in length. In fact the distance between the street and the creek was 59¼ feet along the former side line and 51½ feet along the latter, the average distance being thus more than fifty per cent. greater than indicated upon the plat. After making allowance for the difference between the relative accuracy of town plat surveys and remote forests surveys, commented upon by Clifford, J., in his above quoted opinion, the discrepancy in the Nicolin case is about as inexplicable as is that in the case at bar. It cannot be explained by any hypothesis of mere inaccuracy of measurement. Equally with the facts in our case, it is suggestive of a failure on the part of the surveyor to make any measurement at all and of his reliance upon mere recollection or conjecture. It was contended there as here, that the discrepancy was so great that the specification of distance should prevail over the monuments. In answer to this contention, the court, speaking by Mitchell, said:

> "Plaintiff, claiming that lot 1 extends south from Water Street only the distance indicated by these figures (35 and 33 feet) as the length of the east and west lines, brings ejectment against defendant for the strip of land lying between that and Sand Creek. We remark, in passing, that we do not see why he might not with equal propriety have measured from Sand Creek north, and claimed the strip of land fronting on Water Street.

The defendant claims that, according to the plat lot 1 includes all the land between the street and the creek.

"Upon these facts there are two very familiar and well-established principles in the construction of conveyances, which are, in our opinion, decisive of the case: First, where a map or plat is referred to in a conveyance, it becomes, for the purpose of the description and identification of the land, a part of the deed; and, second, courses and distances must yield to monuments, visible objects, or natural boundaries called for in the deed. The plat according to which plaintiff conveyed, and to which his deeds referred, makes Sand Creek the south boundary as distinctly as it makes Water street the north boundary of lot 1. It represents the east and west lines of the lot as extending from the street to the creek. Conveyances made with reference to this plat must be construed as calling for these boundaries, the same as if expressly incorporated into the body of the deeds, and, under the familiar rule referred to, these must control the distances."

Upon the same principle, in *Olson vs. Thorndike*, 76 Minn., 399, ejectment was maintained for a strip of land between the Minnesota River and its meander line, the disputed tract being about 51 rods in length and 26 rods wide at the broadest end.

"In ascertaining the boundaries of surveys or patents, the universal rule is this: That wherever natural or permanent objects are embraced in the

calls of either, these have absolute control and both course and distance must yield to their influence."

Brown vs. Huger, 21 How., 305, 318.
Preston's Heirs vs. Bowmar, 6 Wheat., 581 (per Story, J.) at p. 582.
Tyler on Boundaries, 30.

So in *Menasha Wooden Ware Co. vs. Lawson,* 36 N. W., 412, (Wis.), the actual shore line of the stream was held the true boundary of a government lot as against a meandered line three hundred and twenty feet distant.

The court said:

"We think the cases in this court, in Minnesota, in the Supreme Court of the United States, and in other courts, expressly hold that the meander lines made by the government surveyors are not to be considered in determining the actual boundaries of lots which are sold by the government as bounded upon rivers or other navigable waters. The government plats show on their face no meander lines as different from the actual banks or shore of the rivers upon which such lots are described as lying. The purchaser does not know the meander lines and does not purchase with any regard to them. He purchases a lot bounded on either two or three sides by straight lines, and on the other side by the river as shown upon the plat. We think this was expressly decided in the case of *Schurmeier vs. R. R. Co.*, 10

Minn., 82; 7 Wall, 272; both by the Supreme Court of Minnesota and the Supreme Court of the United States."

So in *Wright vs. Day,* 33 Wis., 263. The court said:

> "The meander line of land bordering upon a navigable stream or river is never considered the boundary line of the government sub-division on the side next the river, but the purchaser from the government takes to the margin of the stream or water's edge."

And again in *Boorman vs. Sunnuchs,* 42 Wis., 243, it is said that:

> "If the meander line and the actual water line differ, the latter is the true line of a lot bounded in terms by the meander line."

So in *Sphung vs. Moore,* 22 N. E., 319, (Ind.), the actual water line was held to prevail over the meandered line, which was pronounced no boundary line in a case which involved a discrepancy of forty-three acres in the size of a single government lot.

The same rule was applied in *Palmer vs. Dodd,* 31 N. W., 209, (Mich.), in which in the case of a similar discrepancy it was held that:

> "The meander lines run by government surveyors have no significance as boundaries and are

only intended to afford a means of computing the number of acres the government requires payment for, nor is the grantee limited to the number of acres specified in the patent."

For additional applications of the same rule, see also the following cases:

County of St. Clair vs. Livingston, 23 Wall., 46, 62-3.
Fuller vs. Dauphin, 124 Ill., 542.
Clute vs. Michigan, 65 Mich., 48.
Chan vs. Brandt, 45 Minn., 93.
St. Paul &c. R. R. Co. vs. St. Paul &c. R. R. Co., 26 Minn., 31.
Ladd vs. Osborn, 79 Ia., 93.
Heald vs. Yumisko, 7 N. D., 427.
Jones vs. Pettibone, 2 Wis., 308-320.

In this last cited case fifty-four acres lying between the meander line and the water were held to have passed with forty-six acres on the landward side of the meander line.

Although it was in the Schurmeier case that this court was first called upon to adjudicate the nature of a meander line as known to the standard surveys of our public lands, substantially the point involved had been repeatedly passed upon in this court and in many of the states. In *Lodge's Lessee vs. Lee,* 6 Cranch, 237, an island called Eden, had been conveyed *by name* accompanied by specifications of the courses and

distances of its shores. The courses and distances it was held, must yield to the actual shore line as a natural boundary or monument. The same principle had been recognized in *Brown vs. Huger,* 21 How., 305, 321, where also the court cites approvingly the case of *French vs. Bankhead,* 11 Grattan, 136, 157, applying a similar principle to a survey of Old Point Comfort. Decisions to the same effect abound in the state courts. An exceptionally instructive one, is that of Judge Robertson, in *Bruce vs. Taylor,* 2 J. J. Marshall, 160, (A. D. 1829). There was involved in that case a discrepancy of some 400 acres. The river was held to be the true boundary and the courses and distances were rejected. The case is quoted at length, and approved as very instructive, by Swayne, J., in *County of St. Clair vs. Lovingston,* 23 Wa., 46, 63. Of similar import are *Lynch vs. Allen,* 4 Dev. Bat., 62, and *Kelley vs. Graham,* 9 Watts, 116.

ELEVENTH POINT.

Review of defendants' meander line citations.

The only points of law determined in *Horne vs. Smith,* 159 U. S., 40, were that a misnomer of a body

of water by the government surveyor is not binding upon the government; so that if by mistake he fixes upon one body of water a name which belongs to another, the identity of the body of water is not thereby changed; that if in fact his surveys extend only to a given body of water they terminate there although he confuses the name of this body of water with another lying beyond; and that in determining whether he has misnamed the body of water upon which he terminated his survey, the plat and survey must be read in the light of the physical aspects of the territory surveyed, from which, rather than from his nomenclature, the courts must determine upon which of the two competing bodies of water his survey actually terminated. The case may be condensed into the single proposition that in determining upon which of several neighboring bodies of water a survey actually terminated, the nomenclature of the surveyor is less cogent than the physical aspects of the ground. The case was therefore soundly distinguished by Lochren, J., in 103 Fed., at page 108.

It is not contended in this case that there was any other body of water with which Cedar Island Lake was, or could have been, confused.

In *Bates vs. Ill. Cent. R. R. Co.,* 1 Black, 204, 208, there had been patented to one Kinzie a fractional section of land which, according to the government

plat and field notes, was bounded on the east by Lake Michigan, and on the south by the Chicago River, as at its mouth, it flowed due east into Lake Michigan. It turned out, that shortly before emptying into the lake the river divided itself into two branches, one flowing due east as delineated upon the plat, the other diverging towards the south a short distance before reaching the lake. The plat, when read in connection with the configuration of the ground, left no doubt that the mouth of the river which the surveyor had adopted as the south boundary of the Kinzie tract was the northerly mouth which flowed due east into the lake. The heirs of Kinzie nevertheless claimed the right to cross this mouth of the river and to take all of the land lying north of the more southerly branch of the stream, on the ground that the more southerly branch was the stream's true mouth.

The case therefore resembled *Horne vs. Smith* in that the ambiguity and dispute arose from the presence upon the ground, of two neighboring bodies of water, where only one was shown upon the plat. It differed from *Horne vs. Smith* in that the reason assigned for going to the further stream was, that the surveyor ought to have carried his survey to the further stream, although in fact he did not. Kinzie's heirs could not deny that the plat itself indicated that the northerly branch had been adopted by the surveyor as the south

boundary of the Kinzie tract, but their claim was, that he was bound to adopt the more southerly branch, because that was the main and true mouth of the stream. The case instead of bearing any resemblance to ours, is practically its opposite. We are contending that the monument by which, according to the plat, our land is bounded, shall be recognized; he was contending that the monument by which his land was bounded should be ignored.

Niles vs. Cedar Point Club, 175 U. S., 300, is of stil'l less interest. In that case (the opinion in which should be read in connection with the diagram found in 85 Fed. at page 47), there appears to have been a swamp or marsh some mile and a half wide by two or more miles in length, which was somewhat in the form of a triangle, abutting on the south upon the main land, on the west upon Maumee Bay, and on the east upon Lake Erie. From both the bay and the lake it was separated by sand ridges or points. This triangular tract of marsh the surveyor did not include in his survey, but meandered its three margins, to-wit, along the main land, along the bay shore, and along the lake shore; and upon one plat it was noted as "flag marsh," and on another as "impassable marsh or water." The court found that in fact it had always been land; that the plats did not import that it was anything else than land; and that it ought to have

been surveyed as such. The lots on the main land which abutted upon this marsh did not either by the field notes or by the plat purport to abut upon either lake or bay. On the contrary, the meander line of lake and bay appeared on the plat as more than a mile distant from them. The surveyed line which divided the marsh from the main land did not purport to be a meander line in any other than a literal sense, to-wit, a crooked line; and the only conceivable ground which the upland lot owners had for claiming the swamp was that the surveyor *ought* to have extended the survey over the swamp land but did not. The case did not present a single point of contact or analogy with the case at bar. It is no authority that a meander line is a boundary line within the meaning of the rule which we have been discussing, for the reason that the line between the uplands and the swamp was not a meander line within the meaning of the term as we have been using it. By a meander line, we of course mean, not merely a crooked or irregular line, but a line which is intended to follow the sinuosities of a stream or other body of water. The case was thus, and no doubt soundly, distinguished by Lochren, J., in 103 Fed., at page 108.

As to the case of *French-Glenn Co. vs. Springer*, 185 U. S., 47, we are unable to determine what it is that the learned counsel for defendants suppose it to

have decided. It seems incredible that they should construe it as adjudging that the courses will not be as readily modified as the distances, in the pursuit of a monument, or that a course will not be as freely deflected in order to reach a lake as a natural monument, as it will be in order to reach a marked tree or other artificial monument.

The French-Glenn case is easily put into a nutshell where it will remain, despite the admonition of an eminent English judge, that it is one thing to put a case into a nutshell, and another thing to keep it there. The case is simply a cross between the above mentioned cases of *Horne vs. Smith,* and *Niles vs. Cedar Point Club.* That there was a more or less watery area bounding the plaintiff's land on the north, seems to have been agreed by all the witnesses, the principal issue, as presented to the jury by the trial court, being as to whether, at the time of the survey that area was lake or swamp. The trial court charged, that if the jury "believed from the evidence that there was a swamp or marsh, instead of said lake, immediately north of, and adjoining, said lots," they should find for the defendants. See 35 Or, 312.

There is nothing to indicate the inaccurate measurement by the government surveyor of courses or distances, or to suggest that the discrepancy was due to any other cause than his treatment of the disputed area as lake, owing presumably to the especial wetness of

the season, when he should have treated it as swamp or marsh as the jury found. The case therefore resembled the Niles case in that the so-called meander line had been run not along a waterway, but along the margin of a marsh. It differed from the Niles case in treating and denominating the marsh as a lake; for in the Niles case there was no confusion whatever between lake and marsh, the two being sharply descriminated both in the field notes and upon the plat. But just as in *Horne vs. Smith*, the surveyor in terminating his lines upon a bayou, treated and denominated it as the neighboring river, so in the French-Glenn case, he erroneously treated and denominated a marsh, as the lake. The watery tract upon which he terminated the lines of the plaintiff's survey toward the north, was exactly where he supposed it to be; his mistake had reference not to its identity or location, but simply to its classification. It was a matter of nomenclature as in *Horne vs. Smith*. The refusal of the court in the French-Glenn case to deflect the courses in order to reach the lake, finds its exact analogue in the court's refusal, in the Horne case, to extend the distance in order to reach the river. In each case the court simply, and very properly, held it inadmissible to abandon the real thing upon which the surveyor had actually terminated his lines, and, misled by the mere sound of his words, to go off in pursuit of an entirely different monument from that which the surveyor actually had

in view. This is unquestionably the principle of the decision.

There is possibly one other ground, and only one, upon which the decision in the French-Glenn case might be rested.

The plaintiff in that case in the trial court and in the Supreme Court of Oregon, rested his claim exclusively upon the two propositions that the lake in fact actually abutted upon his lot at the point indicated by the plat, when the survey was made, although it had afterwards receded; and that whether this was the fact or not, the government and those claiming under it, were estopped by the representations of the plat, from asserting the contrary. The opinion of the Oregon court indicates that the possibility of deflecting the courses in order to reach the lake was not mooted. If the deflection of the lines was proposed in this court, it must have been largely as an afterthought, and without having laid the necessary foundation of proofs that the deflection could be accomplished without encroachment upon the vested rights of third parties. The same state of affairs was presented by the proofs and contentions in the analogous case of *Grant vs. Hemphill,* 92 Ia., 218.

In neither case, were there sufficient proofs to enable the court to determine intelligently, whether the courses could be deflected as proposed, without encroachment upon the monuments of adjacent owners

designated by the same survey and plat, and equally forceful with those of the party demanding the deflection. For in every instance of the patenting of land by reference to a plat covering a considerable number of adjacent tracts, the monuments of one patentee are no more sacred that the monuments of another, and as they are all disclosed by the same plat, each is as much obligated to respect the monuments of the others, as he is entitled to pursue his own. The principal which we have in view, was well illustrated in *James vs. Howell*, 41 Ohio St., 696, referred to further on, in connection with our review of defendant's state citations, in which a party claiming as owner of the shore of a lake, sued for the recovery of certain tracts lying out in the lake which had been patented to another party as islands, but which the plaintiff claimed were mere knolls in a flag farsh and therefore included in his tract, which as he claimed was shown by the plat to abut upon the lake.

But, as we elsewhere point out, the same plat which seemed to entitle the plaintiff James to a frontage upon the lake, also clearly disclosed as dry land and as meandered islands the land which the defendant Howell bought from the government. The principle of law which under ordinary circumstances would carry the James tract to the waters of the lake, would have been overstrained, if it had been so applied as to bereave the defendants of land which they had thus

bought in good faith in reliance upon the indications of the same plat.

In *White vs. Luning*, 93 U. S., 514, 525, there were included in a long and complicated description, a couple of monuments, to-wit, a certain fence and a certain ranch, which, if adhered to, would defeat the deed by making an *impossible* description. After the elimination of these monuments the description remained complete and consistent. It was held that, in order to complete a possible description and preserve the deed from defeat, the reference to the monuments might be rejected as surplusage.

The fact is commented upon by the defendants that in *Horne vs. Smith* the Nebraska case of *Lammers vs. Nissen* and a couple of other cases, upon which they rely, were cited in the opinion of the court; but it is very material to observe that they were cited *arguendo* only, by a member of the court, who, upon this subject, appears to have entertained opinions not in entire harmony with the majority of the court, as appears from his dissenting opinion in *Mitchell vs. Smale*, 140 U. S., at page 415.

As to the remark of Mr. Justice Bradley in *Mitchell vs. Smale*, at page 413, to the effect that in case of a plain and obvious mistake or palpable error of the surveyor in running a meander line, the government would have the right to recall the survey and

have it corrected by the courts or in some other way, and that such mistakes do not bind the government, it is to be observed that it contains nothing which countenances the position of these defendants. If he meant that the government could have such mistakes corrected after lands had been purchased in reliance upon the erroneous field notes and plat, (which doubtless he did not), he evidently intended at the same time to assert the efficacy of the plat and patents issued in accordince with it to pass the legal title until corrected by suit in equity to be brought by the government. The general rule of course is that titles acquired through mistake or even through fraud, cannot be recovered as against innocent purchasers. The government in its character of land owner is as much bound by this rule as an individual, and it is not conceivable that Mr. Justice Bradley intended to imply the contrary.

Of the other authorities relied upon by respondents almost every one has its root in the manifestly erroneous charge delivered to a jury by Mr. Justice Miller in *Granger vs. Swart,* 10 Fed. Rep., 961. It appears from the statement of facts in that case that the disputed tract of land was a marshy strip, which between the date of the government survey and the date of the entry had been added to the riparian tract by accretion. Apparently no claim was made by either

party that the meandered line as originally run did not exactly coincide with the then existing water line. It thus appears that the only question of law upon which Mr. Justice Miller was required to pass, was, whether accretions which between the date of survey and the date of entry are added to government lands bordering upon a water course, will pass under an entry of the government lot to which they have thus become joined. Of course they will so pass, as has been since authoritatively determined in *Jeffries vs. East Omaha Co.*, 134 U. S., 178, 194, 195.

Mr. Justice Miller's error, in holding that they would not pass, only has an interest for us, however, through the particular line of reasoning by which he was led to his result. His charge appears to have been delivered upon the assumption not only that a meander line is always and everywhere a boundary line, but that it is a boundary line of such extraordinary rigidity as to resist the general law of accretion. He said:

> "The patents and deeds under which the defendant claims, did not pass the title to the premises in question, unless *at the date of the entries on which they were issued* the Rock River, (where it is called a river), and Lake Koshkonong, (where it is called a lake), extended to and bordered upon the meandered line which constitutes the boundary lands described in the patents."

When one considers how slightly the nature of the meander line had been judicially canvassed prior to the Schurmeier case, it is not strange that even so able a judge as Mr. Justice Miller in the haste of a *nisi prius* trial of a comparatively unimportant case, should have misstated the law, but why and how it is that since the decision in the Schurmeier case his charge in the Swart case can continue to be cited as an authority that a meander line is in the nature of a boundary line, is certainly an unsearchable riddle.

It is important to observe that it is no longer a matter of speculation whether Mr. Justice Miller's reasoning in the Swart case contravenes the reasoning of this court in the Schurmeier case, for when, in *Jeffries vs East Omaha Land Co.*, 134 U. S., 178, 194-196, this court was repudiating the identical result which Mr. Justice Miller had reached in the Swart case, and were holding, contrary to his charge, that accretions to a government lot between the date of survey and date of entry would pass by patent, the authority to which they appealed as in principle decisive of the subject, was the Schurmeier case. They quote at length from the Schurmeier case and then add:

> "We are *therefore* of opinion that the patent * * * conveyed to the patentee the title to all accretion which had been formed up to that date." (P. 196).

Yet Mr. Justice Miller's great and well merited reputation as a lawyer is so much more widely diffused than is the capacity to test the accuracy of his utterances, that it has been assumed in many quarters, that his hasty charge to the jury, must, in some inscrutable manner, be susceptible of conciliation with the elaborate decision on the Schurmeier case in which after full argument he concurred.

No one has been able to explain how they could be reconciled, but upon the blind assumption that they must in some way be capable of reconciliation a certain class of courts have supposed themselves at liberty to follow the principle of the Swart case, even where it apparently diverges from that of the Schurmeier decision.

To this utterly indefensible assumption nearly every material authority on meander lines, cited by defendants can be traced. However extraordinary this assertion may seem, we propose now to verify it, by taking up in chronological order, every material case upon which the defendants rely.

The first in order of time is *Lammers vs. Nissen,* 4 Neb., 245, decided in 1876, eleven years after the Swart charge, and six years after the Schurmeier decision.

The Nebraska court in deciding the case does not so much as advert to the relative effect of large and

small discrepancies between the meander line and the actual water line, upon which, in the case at bar, counsel for defendants lay so much stress. They assume that the result of a divergence between the two lines is the same in the case of a small discrepancy as in the case of a large one. While not so much as referring to the Schurmeier case, they imply that it denied to a meandered line the force of a boundary line only in cases where it does in fact define the sinuosities of the stream. They then treat the case as settled by the authority of *Granger vs Swart,* saying:

> "In *Granger vs Swart,* the principle is enunciated that if between the meander line by which the government survey was made, and the bank of the river, there is, at the time, a body of swamp or waste lands, or flats, on which timber and grass grew, and horses and cattle fed, then the patents for the land surveyed would not cover this land, but must be confined to the actual limits of the meander line and include no more."

The decision thus rests squarely and exclusively upon the overruled case of *Granger vs Swart.*

Though this case was affirmed by this court, it was under a specific disclaimer of passing upon any question of law.

Lammers vs. Nissen, 154 U. S., 650.

As pointed out in 96 Iowa, at p. 423, the state decision in Lammer's case might be explained by its analogy to *Horne vs. Smith* and *Glenn vs. Jeffrey,* since it appeared that the meander line there involved coincided with the bank of a slough.

The case next in order, *James vs. Howell,* 41 O. St., 696, (A. D. 1885), is another positively laughable instance. Upon the plaintiff's appealing to the Schurmeier case in support of the contention that a meander line is not a boundary line, the Ohio court dismissed him by remarking that the Schurmeier case was concurred in by Miller, J., who three years before in *Granger vs. Swart* had charged the jury that the meander line was a boundary line. They then quote Mr. Justice Miller's charge at length and continue; "if the claim of counsel for James be true this charge was bad law," which the court with an alacrity much more flattering to Mr. Justice Miller than to themselves, conceived to be impossible. They therefore concluded that the Supreme Court in the Schurmeier case must have meant, only that a meander line is not a boundary line unless there is some indication of intention that it should be such; although what possible indication of such an intention could have been found by Mr. Justice Miller in the facts of the Swart case they do not pause to inquire. Irrespective of this peculiarity in its reasoning, however, the

case is of no significance whatever here. The same plat which seemed to entitle the plaintiff James to a frontage upon the lake, also clearly disclosed as dry land and as meandered islands the land which the defendant Howell had bought from the government. The principle of law which under ordinary circumstances would carry the James tract to the waters of the lake, would have been overstrained if it had been so applied as to bereave the defendants of land which they had thus bought in good faith in reliance upon the indications of the same plat. The question in which we are interested might have been approximately presented if the land sought to be recovered by James, instead of being the two meandered islands, had been a part of the swamp which surrounded them.

In the next case *Bissell vs. Fletcher,* 19 Neb., 725, (A. D. 1886), the Nebraska court merely quoted again from the case of *Granger vs. Swart,* and their own former decision in *Lammers vs. Nissen,* which they had based upon it, and again declared in broad terms that "where there is a strip of land between the bank of the river and the meander line, and entry of land bounded upon the meander line will not include such strip." Here again no reference was made to the difference, so much emphasized by counsel for these defendants, between a slight discrepancy and a great one.

The next case in order is *Wilson vs. Hoffman*, 70 Mich., 552, (A. D. 1888). The case has no relevancy *whatever to any question of law* with which we are concerned.

The next case is *Glenn vs. Jeffrey,* 75 Ia., 20, (A. D. 1888). The case was simply a forerunner of *Horne vs. Smith,* which is an exact duplicate of it. A survey had been extended only to a bayou, and the water thus reached had been by the surveyor demoninated the Missouri River. It was held that the nomenclature of the surveyor was immaterial, and that the survey extended only to the body of water, which, from a joint reading of the plat, the field notes and the ground, appeared to have been reached.

The next case in order is *Harrison vs. Stipes,* 34 Neb., 431, (A. D. 1892). Here for the third time the Nebraska court repudiated the authority of the Schurmeier case by declaring without any reference to the magnitude or extent of the discrepancy between the meander line and the water line, that "an entry of government land bounded by a meander line, does not include land lying at the time between such meander line and the bank of the river." The only citation made by the court was *Lammers vs. Nissen,* which is already noticed was in its turn based upon Mr. Justice Miller's charge in the Swart case. All these Nebraska cases are mere negations of the general rule.

In *Whitney vs. Detroit Lumber Co.*, 78 Wis., 240, the Wisconsin court, which, as hereinbefore shown, had freely acknowledged the supremacy of the actual water line as against the meander line of the government survey, laid down the erratic and arbitrary limitation that in the application of that principle it is not permissible for the purchaser of a government lot to go beyond the limits of his forty-acre lot in pursuit of the water frontage to which the survey and plat show him entitled; and this irrespective of the magnitude of the discrepancy between the two lines. It would seem to follow from this decision that in one case the party might be entitled to go substantially a quarter of a mile in pursuit of his water frontage, while in another case he might not be permitted to go as much as a single rod. The artificial limitation thus arbitrarily invented by the Wisconsin court has not so far as we are advised, received recognition elsewhere. It is a sufficient objection to it, that it really introduces by a forced process a greater degree of inequality than it is calculated to displace. Out of regard to a purely imaginary subdivisional line not purporting to be a boundary, it will permit a party to go in pursuit of his water frontage a hundred times as far as it will in another similar case. Gross inequality in results is bad enough when necessitated by the consistent observance of a rational distinction, and it becomes intolerable when produced by a distinction arbitarily invented.

N. Y. & T. Co. vs. Thomson, 83 Tex., 169, (A. D. 1891) possibly falls within the principle of *Horne vs. Smith,* since it was found that the surveyor was mistaken as to the identity of the channel at which he terminated his survey. Unless defensible upon this ground, the case amounts simply to an abandonment of the recognized rule that natural monuments must prevail over courses and distances.

Fulton vs. Fraudolig, 63 Texas, 330, 332, (A. D. 1885) also illustrates the divergence of Texas decisions from those of this court. It is simply a negation of the principle of *Mitchell vs. Smale,* 140 U. S., 406. The excess acreage in the form of a protruding point of land, which was held to pass in the Smale case as a part of the adjacent riparian tract, was several times larger than the similar point, which, in the Texas case was, under similar circumstances, held not to have passed. In other words, *Fulton vs. Fraudolig* belongs in the class of overruled cases, the question involved being a Federal question when it arises upon the construction of a Federal survey and patent.

Shoemaker vs. Hatch, 13 Nev., 261, (A. D. 1878), is identical in principle with the Federal case of *Horne vs. Smith,* above mentioned; the court holding that the surveyor had evidently mistaken the identity of the stream upon which he had terminated his survey.

The next case is *Grant vs. Hemphill,* 92 Ia., 218, (A. D. 1894). This is one of the few cases cited by defendants not manifestly resting upon *Granger vs. Swart.* It would be unprofitable to comment in detail upon the case, for the reason that if it can be construed to sustain the position of defendants, it must be regarded as overruled by the later case of *Schlosser vs. Crookshank,* 96 Ia., 414, (A. D. 1895), which we have elsewhere cited, and which fully sustained our position, in the case which of all those to be found in the books most resembles ours. But it can not be so construed. It is the exact duplicate of *French-Glenn vs. Springer,* 185 U. S., 47, upon which we have already commented.

The next case is *Fuller vs. Shedd,* 161 Ill., 462, (A. D. 1896). This is the first case affording any judicial recognition of the distinction which counsel for defendants draw between a slight and great discrepancy between the meander line and the water line. The court in its opinion in this case does elaborately present this distinction, but all that is said upon the subject is open to two criticisms: (1) It was by way of *obiter dictum,* as the court determined that in the case there under consideration the discrepancy was not great enough to justify adherence to the meander line (p. 482). (2) The theory thus presented appears to be merely the court's

interpretation of the cases which we have already considered, commencing with the overruled case of *Granger vs. Swart,* and so passing on to its progeny, *Lammers vs. Nissen, James vs. Howell,* etc.

No interpretation of these cases which fails to recognize the heresy that lurked in the Swart case, and its taint in the other decisions which have confessedly issued out of it, can have any claim to acceptance.

From this Illinois dictum the idea that the water boundary may be ignored in favor of the meandered line where the discrepancy between them is great, passed into a similar dictum in *Barnhart vs. Ehrhart,* 33 Ore., 274 (A. D. 1898). The court placed in the foreground of its list of authorities the overruled case of *Fulton vs. Fraudolig,* 63 Tex., 330, followed it with the overruled case of *Granger vs. Swart,* and the other decisions above cited to which it has given rise. That the proposition as enunciated in the Oregon case is in the nature of a dictum appears clearly from the fact pointed out by the court on pages 281 and 282, that Wild Horse Creek, the water way in question in that case, was not represented, either by the field notes or by the plat, as the boundary of the lands in question. On page 282, the court said that if the creek had been represented as a boundary in the field notes and upon the plat and had been a stream of any size

and value, the case might have been regarded as falling within the principal of the Schurmeier decision. The court say:

> "The field notes of the survey of 1871 do not purport to be a meander of Wild Horse Creek, nor does the amended plat contain the name of that stream."

The next case in order is *King vs. Watkins*, 98 Fed., 913, (A. D. 1899). By reference to the lower half of page 924 of the opinion, it will be seen that the issue was not between natural monuments on the one hand and unaided courses, distances and quantities on the other, *but was a case of conflicting natural monuments;* so that the court was of course at liberty to award priority to those natural monuments which were in harmony with the courses, distances and quantities. In other words, the court found the courses and distances to be corroborated by many of the natural monuments which were inconsistent with those relied upon by the defendant. The court pointed out, that to have adopted the natural monuments appealed to by the defendant would have left out of the tract some of the streams called for as falling within it, would have caused other streams to flow in the opposite direction from that assumed by the surveyor, and would have left other streams missing altogether. Thus, for example, by reference to Figs. 1 and 2 on pages 914

and 915 of the report, it will be seen that the westerly line of the tract, as laid down by the surveyor, crosses Pigeon Creek, while if the line had run as contended for by the defendant, it would not have approached Pigeon Creek.

TWELFTH POINT.

As involving the construction of a federal survey the case is reviewable by this court.

French-Glenn Co. vs. Springer, 185 U. S., 47, 54.
Cousin vs. Labatut, 19 How., 202.
Magwire vs. Tyler, 1 Black, 195, 203.
R. R. Co. vs. Schurmeier, 7 Wal., 272.
Kennedy's Executors vs. Hunt's Lessee, 7 How., 586 at p. 594.
Packer vs. Bird, 137 U. S., 661.
Knight vs. Land Assn., 142 U. S., 161.
Shively vs. Bowlby, 152 U. S., 1.
Glasgow vs. Baker, 128 U. S., 57.

The judgment should be reversed, and it appearing that upon the facts found, plaintiff was entitled to judgment, the cause should be remanded, with directions to enter judgment in favor of plaintiff as demanded in its complaint.

WM. W. BILLSON,
CHESTER A. CONGDON,
Of Counsel for Plaintiff in Error.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1903.

No. 127.

SECURITY LAND AND EXPLORATION COMPANY,
PLAINTIFF IN ERROR,

against

G. A. BURNS AND MARY L. BURNS, DEFENDANTS IN ERROR.

ERROR TO SUPREME COURT OF MINNESOTA.

REPLY BRIEF FOR PLAINTIFF IN ERROR.

The points and citations of defendants in error suggest the following comments:

What is the sense in which, by this court, universality has been predicated of the rule in favor of monuments?

The contention of defendants in error that the court in its repeated declarations of the universality of the rule has

had reference to its widespread geographical diffusion, and not to the uniformity of its application, is not without a certain kind of value. It serves to show how utterly nude of every shred and semblance of verity, forensic argumentation is capable of becoming. In the rule's earliest formulation, by Story, J., in Preston's Heirs *vs.* Bowmar, 6 Wheat., 582, its universality was adverted to *for the sole purpose* of contrasting the *uniformity of its application* with the variability of the rule regulating the force of courses as against distances. By Marshall, C. J., in Newson *vs.* Pryor's Lessee, 7 Wheat., 7, 10, the rule was said to find its justification in the necessity for adopting a principle of uniform application. "*Some general rule of construction must be adopted, and that rule must be observed, or the conflicting claims of individuals must remain forever uncertain.*" In all of our other citations the meaning of the court is made equally manifest.

As was said by Story, J., in Cleaveland *vs.* Smith, Fed. Cas. No. 2874, when the attempt was made to lure him away from what he considered the monument, by specious suggestions of peculiar intent in the particular case:

> "It is essential to the protection of titles that the interpretation should depend upon known, fixed, uniform principles, and not upon the conjectures of judges or the nice balancing of possible intentions, or the supposed leading but undefined motives in a particular grant."

THE RULE IS NEVER BROKEN BY MERE MAGNITUDE OF DISCREPANCY.

There is not a single adjudication to the contrary by an English-speaking court.

A few *dicta* there are, as pointed out in our principal brief, but no adjudications. The proposition seems to be true even in Texas (as true at least, as, upon this particular subject, any proposition can be in that State), for in Burton *vs.* Caldwell, 53 Tex., 408, the supremacy of monuments was asserted in spite of a discrepancy of a thousand acres.

In this connection it is noticeable that Davis *vs.* Rainsford, 17 Mass., 207; Baldwin *vs.* Brown, 17 N. Y., 359, 361; Buffalo, etc., Co. *vs.* Stigeler, 61 N. Y., 348, 351; Booth *vs.* Upshur, 26 Tex., 64, 70, and Hale *vs.* Cottle, 21 Or., 580, 585–'6, which mark the beginning of the rule's disintegration in those States respectively, were all cases of comparatively slight discrepancy.

That all of the cases cited by defendants in error as evincing flexibility in the rule appear, upon examination, to proceed upon other grounds than the magnitude of the discrepancy, is substantiated in detail in our principal brief and in the ensuing sections of this reply. This is indeed so indisputable that in their supplemental brief the defendants in error are constrained to admit, that "if monuments

intentionally adopted are attacked for error, *only because they are more distant* from each other than returned by the surveyor, and so enclose a larger area than intended, the error, *for the purposes of construction*, will be imputed to the distances and not to the monuments" (p. 2). * * * That "the fact of a discrepancy in area does not, of itself, affect the invalidity of any title claimed by plaintiff in error" (p. 14). * * * And that "the defense in these cases does not rest upon the discrepancy in quantity, but upon the fact that because of the failure of the deputy surveyor to make any survey at all, and of the fictitious character of his return, the lands in question have never been surveyed, and did not pass under the patents" (p. 15).

It is indeed argued by defendants in error that the magnitude of a discrepancy may indirectly impair the force of a monument, not only by disclosing a fraudulent omission of actual survey, but by a bearing that it may have "upon the question of the intent of the parties to the grant;" the latter suggestion having reference, as we suppose, to the perennial issue of fact, calamitously opened up in the few States heretofore mentioned, as to whether the tract inclosed by the designated visible monuments is in truth the thing intended to be conveyed. These two suggestions we discuss under separate headings further on.

Such of the defendants' citations as are claimed to have involved a competition between an actual shore line and the courses and distances of a meander line were reviewed

in our principal brief (pp. 115–137). As to all their other authorities bearing upon monumental supremacy, unless indeed in our attempts to follow them through the mazes of their kaleidoscopic regroupings in defendants' briefs, one or two may have eluded us, we now ask the court to observe that, so far as relevant to our controversy, they resolve themselves into these four classes:

(1.) Those in which the monumental calls have been conflicting, ambiguous, or deformed by mere inadvertences of expression.

(2.) Those which either enforce the principle of monumental supremacy or are irrelevant as not involving it.

(3.) Those which proceed upon a rejection of the doctrine of this court (settled since McIver's Lessee *vs.* Walker, 9 Cranch, 173, 178), that "*it is the intention of every grant to convey the land actually surveyed;*" and upon the adoption of the opposite doctrine, that it is in each case a question of fact whether such was the intention or not.

(4.) Those that involve a repudiation of the doctrine of this court, declared in McIver's Lessee *vs.* Walker, 9 Cranch, 173, 178, and in the later decisions cited on pages 89–92 of our principal brief, that the supremacy of monuments is not impaired by the fact that they were designated without actual survey; and which set up the opposite doctrine that a mon-

ument designated without survey is to be classed as conjectural and as such is to be subordinated to course and distance.

I.

Cases of conflicting, ambiguous, or inadvertently expressed monumental calls with which defendants insist upon confusing the case at bar.

And first, a few more words about the four grievously tortured cases upon which, with so great and so obviously misplaced confidence, the defendants principally rely—the cases of Bates *vs.* Ill. Cent. R. R. Co., 1 Black, 204,208; Horne *vs.* Smith, 159 U. S., 40; Niles *vs.* Cedar Point Club, 175 U. S., 300, and French-Glenn Co. *vs.* Springer, 185 U. S., 47. In their supplemental brief the defendants appear to assume that the last-mentioned case particularly is invested with great significance by the alleged fact that counsel there pursued the same lines of argument that we do here. We are distinguishing that case, not upon the ground that it was argued differently from ours, but because it involved a *radically different state of facts.* The circumstance which made it legally possible to liken the French-Glenn Co. case to those of Horne and Niles, which, significantly enough, were the only authorities upon this subject to which the court in its opinion deemed it worth while to advert, was that at the time of the survey

there were two distinct watery margins, that of a swamp and that of a lake, so situated as to make it necessary to determine which of the two margins it was whose meanderings were noted by the surveyor. The cases are of course numerous in which either the edge or the thread of a marsh has been utilized as a monument, its fitness for that purpose varying with the distinctness with which it is traceable upon the ground.

Felder *vs.* Bonnett, 2 McMullen's L. R., 44.
Cherry *vs.* Slade, 3 Murph. (N. C.), 82.
Spuill *vs.* Davenport, 1 Jones L. (N. C.), 203.
Rowe *vs.* Cape Fear Co., 45 S. E. (N. C.), 830.

Whether it was the part of wisdom to admit such a case as that of the French-Glenn Co. into the same class with those of Horne and Bates by likening a competition between a lake shore and the margin of an adjacent and probably connected swamp to a competition between a river and a neighboring branch or bayou (although there was no double meandering, as in the Niles case, to evince the surveyor's intention to distinguish marsh from lake), it is unimportant to inquire. It's tranquilizing tendencies are not obvious. But that, at all events, is what the court did, and what confessedly it is impossible for it to do in the case at bar. Although the principle of the French-Glenn Co. case would, as we think, have been better disclosed had the learned justice who wrote the opinion brought the marsh more promi-

nently into the foreground, there is no mistaking the scope of the decision when it is read upon the approved method of paying as little attention as possible to the language, and as much attention as possible to the facts actually involved and to the points therefore actually adjudged. Most of the testimony even on behalf of the plaintiff, The French-Glenn Co., tended to show that it was rather marsh than lake that bounded its tract on the north at the time of the survey. (See pp. 37–40 of Record in French-Glenn Co. case.)

It is therefore a misapprehension to suppose that any of these four cases hinged upon any form of competition between courses and distances on the one hand and monuments on the other. In the Horne and Bates cases, where the object in fact meandered was a well-defined waterway, it was confessedly that waterway and not the courses and distances of any meander line which was adopted as the true boundary. The same was true in the Niles case, where the object actually meandered was a swamp, and where the coincidence of the meander line with the margin of the swamp was expressly stipulated as a fact (175 U. S., 301, 302) and expressly assumed by the court (p. 306). In the French-Glenn Co. case there was nothing to show the lack of coincidence; and even though the coincidence had been denied, it might well have been considered that after the lapse of so many years, and in the face of conditions so changed, the original location of a margin of no greater distinctness and permanence than that of

a marsh could not be more reliably determined than by reference to the reported courses and distances, as in other cases of lost monuments. Each of the four cases, therefore, is a typical instance of that form of conflict or competition between monuments which arises from ambiguity. For a competition between monuments may arise not only through an improvident designation of several monuments which prove to be irreconcilable with one another, as was the case in White *vs.* Luning, 93 U. S., 514, 525, but through a description of a single monument in terms which prove to be partly applicable to one object and partly applicable to another. Thus in each of the four cases under consideration there is a double description by the surveyor of the marginal monument which he had in view: (1) by specification of its locality, *i. e.*, its course and distance from some other object; (2) by its specific or class name. It turns out that there are two margins, each of which is pointed at by one branch of the description. In cases of this kind, as manifestly as in cases of strict conflict, what the courses and distances do is simply to identify the true monument.

In all four of the cases under consideration the unsuccessful attempt was to induce the court to adopt as boundary a margin which confessedly was not the one meandered by the surveyor. In all four cases this was urged upon the ground that the surveyor ought regularly to have meandered not the margin which he did, but the other; and to

this contention there was added in the Horne case and the French-Glenn Co. case the argument that the nomenclature of the surveyor denoted a mistake on his part, not as to the location, but only as to the nature, identity, or name of the margin upon which he terminated his survey. The margin of Cedar Island lake which we claim as a boundary is confessedly the very margin which, by the courses and distances of his meander line, the surveyor attempted and intended to describe.

A refusal to deflect side lines would not avail the defendants.

It must, moreover, be borne in mind that even though the French-Glenn Co. case could be regarded as laying down the inscrutable doctrine that courses cannot be deflected in pursuit of a monument, it would not avail these defendants.

Section four, for purposes of survey, is an entirety. Its four exterior lines are the only lines required to be actually run. Its south and east lines, each of which was returned as intersecting the lake (Exhibit "A," p. 77½, and the field-notes at pp. 32, 35 of Record) *do not require deflection in order to reach it.*

Again, even though each quarter section or forty-acre tract be considered separately, and the lines of no lot deflected, any area relieved by refusal to carry lot 3 to the

lake because deflection would be necessary would be covered by lots 5, 6, and 7. Lot 7 would confessedly reach the lake without deflection and within the limits of section 4. As to lots 5 and 6, the objection that if undeflected they cannot reach the lake within the limits of section 4 is palpably fallacious. According to the plat, *the lake is at the same time the eastern boundary of lots 5, 6, and 7 and the eastern boundary of section 4.* The east line of section 4 must go to the lake as obviously as the east line of the particular lots; they are one and the same and move unavoidably together. Hence, no matter how far the east line of lots goes in pursuit of the lake, for them to pass the bounds of section 4 is an impossibility.

Of the defendants' other citations, the following also are pure cases of conflicting or ambiguous monuments, the courses and distances being resorted to for no other purpose than to distinguish the true monument from the false.

Murdock *vs.* Chapman, 9 Gray, 156 (cited by defendants page 22 of principal brief). Reading the deed and plat together, the conveyed tract was there described as extending by a certain course and distance to a certain lot which was described, (1) as the Randall lot, (2) as lot 7, evidently upon the assumption that lot 7 was the Randall lot. This assumption proving to be mistaken, it became necessary to determine which of the two lots the parties really had in view, which was the ideal function of the courses and distances.

King *vs.* Watkins, 98 Fed. Rep., 916 (cited at page 23 of defendants' principal brief), besides being a case of conflicting monuments, as pointed out on page 137 of our principal brief, was reversed by the circuit court of appeals (55 C. C. A., 290).

Shoemaker *vs.* Hatch, 13 Nev., 261–266 (cited at page 33 of defendants' principal brief). The only question there involved was, as in Horne *vs.* Smith, whether the survey terminated upon the main channel of a river, or upon a side channel (pp. 265–266).

Such also is McCormick *vs.* Huse, 78 Ill., 363 (cited at pages 37–38 of defendants' principal brief).

Such also is Hostetter *vs.* Los Angeles Ry. Co., 108 Cal., 38, 43 (cited at page 37 of defendants' principal brief), where, from ambiguities characteristic of all California rivers, it became a dark question where and what was the river, and whether it was the "river proper," or the east line of "the official bed," that the parties had in view as a boundary—a doubt which would, of course, ordinarily be solved by reference to the specified distances.

Of the cases cited on page 14 of the supplemental brief, the following also fall within the class under consideration:

Schlosser *vs.* Hemphill, 90 N. W. Rep., 842, was a duplication of French-Glenn Co. *vs.* Springer. The competition was between the line of a swamp and the line of a neighboring lake, as repeatedly recognized in the opinion of the court, where it is said:

> "That there was swampy and low land in section 30 north of plaintiff's lots, admits of no question, and in wet seasons a large part of it was covered with water" (p. 843). "No body of water necessary to be meandered;" * * * "The body of water was temporary, and no meander line should have been run there." * * * "No permanent body of water of any considerable size existed there" (p. 843).

Hamilton *vs.* Foster, 45 Me., 32, was an acknowledged case of conflicting monuments, the court saying:

> "It is not, then, a case where monuments cannot be found, but where they cannot be reconciled one with another. And if no mode could be found to ascertain the intention of the parties as disclosed by the monuments, it is a case analogous to one where monuments fail. In such a state of things, courses and distances are to govern" (p. 40).

Field *vs.* Columbet, 9 Fed. Cases, 12. Here again there was acknowledged conflict between monuments, to wit, between a call to proceed "along the Lomas Atlas hills," and a call to reach "the aforesaid wagon road to Galindo's house." The former call was rejected in favor of the latter, the specification of quantity being deemed a sufficient guide to the true monument.

Jamison *vs.* Fopiano, 48 Mo., 194, was another case of ambiguity in the designation of a monument. The call for a boundary "on the west by block No. 42," if standing alone, would have imported, no doubt, a boundary on the east line

of the block. But the land conveyed was also described as the tract "laid down on the map aforesaid as the claim of Michael Lami," which Lami tract overlay the easterly part of block 42. This was justly held to show that the parties had in view as a west boundary, not the easterly edge of block 42, but that part of the block lying west of the Lami claim. It was like resort to distance in peculiar cases, to determine whether the reference is to the margin or to the thread of a stream.

Although we believe they are not illustrated by citations made on behalf of defendants, there is undoubtedly a class of cases in which monuments may be rejected as having been falsely designated through mere inadvertencies of *expression*. Of this class Evans *vs.* Green, 21 Mo., 170, may serve as an example. There was there a call for the southeast corner of an adjoining tract as a monument. There were enough attending circumstances to make it clear that the corner which the parties had in mind was the southwest corner. It will be observed that in such a case the mistake is that of the scrivener only in failing to correctly name the object or point which was in the mutual contemplation of the parties.

II.

Cases which either enforce the principle of monumental supremacy or are irrelevant as not involving it.

Platt *vs.* Vermillion, 90 Fed. Rep., 356–367 (cited at page 37, defendants' principal brief), holds only that the calls may be reversed, if necessary, to make the lines close, and that a line run on the ground controls a call for the line of a previous survey, the case following upon this last point the doctrine of the courts of Texas, where the controversy arose, despite the contrary ruling of this court in Land Co. *vs.* Saunders, 103 U. S., 316.

So, under this class fall the following citations from page 14 of defendants' supplemental brief.

Hall *vs.* Eaton, 139 Mass., 217, 221, was a case of conflict between the course and the distance, no monument being involved.

Lamprey *vs.* Meade, 54 Minn., 290, 299, was a case in which the principle of monumental supremacy was most impressively enforced, as noted upon pages 55–56 of our principal brief. The court merely recognized, by way of dictum, that an extreme discrepancy would give rise to the legal question which is here under discussion, to wit, the question of the limitations, if any, upon the distance to which the courts will go in pursuit of a monument.

Fuller *vs.* Shedd, 164 Ill., 462. In that case, also, the supremacy of the monuments was enforced. All that was said in recognition of the doctrine of the overruled case of Granger *vs.* Swart and its illegitimate progeny was by way of *dictum* only.

Erskine *vs.* Moulton, 66 Me., 276, merely holds that the rule which ordinarily carries to the center or thread of the stream land which is described as bordering upon the stream should not be applied in a case where, although the land is described as running to a cedar post on the bank of the stream, and then by the stream, etc., a plat is annexed to which reference is made for fuller description, and which shows upon its face that the tract does not extend even as far as the low-water mark.

Heald *vs.* Yumisko, 7 N. D., 422, is another of the cases in which the supremacy of monuments was rigidly enforced and the shore line held to constitute the true boundary, instead of the meander line, which was relied upon there as here.

Cansler *vs.* Fite, 5 Jones' L., 424, is another of the cases clearly recognizing the supremacy of monuments, to which, it is said, the lines must be run " regardless of distance, and even though the designated monument is an adjoining tract, the boundaries of which can only be traced by pursuing the courses and distances of another deed." The ground upon which the case was withdrawn from the operation of the general rule was that the monumental call was for a

marked tree "*near*" the line of an adjoining tract, and that no such tree being found, the monument failed, thus justifying resort to the courses and distances to determine its original location.

Bagly *vs.* Morrill, 46 Vt., 94, 99, 100. Here again the rule in favor of monuments is recognized as being inflexible when the existence and location of the monuments can be proven (pp. 99, 100). The court said:

> "In the case at bar no monument is mentioned in the deed, as already stated, which is shown to conflict with the courses and distances."

III.

Cases which proceed upon a rejection of the doctrine of this court (settled since McIver's Lessee vs. Walker, 9 Cranch, 173, 178) that "it is the intention of every grant to convey the land actually surveyed," as distinguished from a tract enclosed only by ideal lines.

That doctrine presupposes that the courses and distances between monuments are introduced, not as an independent and competitive description of the land to be conveyed, but as an aid to the identification of the monuments; as is pointed out by Chief Justices Gibson and Bibb, and by Judges Caton and Henderson, in the decisions quoted at

pages 46–52 of our principal brief. It rests bodily upon the singleness of the description. It is therefore departed from by all the New York, Massachusetts, Texas and Oregon cases cited by defendants, all of which start out by assuming that specifications of course and distance are an independent description of the land, which although ordinarily to be regarded as less trustworthy than the monuments, may at any time outrank and displace the monuments, by force of any special circumstances indicating that they describe more nearly than the monuments the property which was intended to be conveyed. The four stages in the progress of the heresy have been the same in each of the four States. They consist of the following four fallacious assumptions: (1) That there are two descriptions of the land to be conveyed instead of one; (2) that it therefore may or may not prove to be that the land demarkated is the land intended to be conveyed; (3) that the only reason for the supremacy of monuments is that mistakes are generally less likely to occur with respect to them, thus expressly repudiating the doctrine of this court that the true reason is that it is the demarkated tract and nothing else that the parties intend to convey; (4) that whenever, therefore, there appears under the circumstance of a particular case, to be less probability of error in the courses and distances than in the monuments, the former should prevail. These are precisely the processes by which, in the Rainsford case, the Massachusetts court was led (independently of the fact

that there was there a conflict of monuments) to award supremacy to distance, by reason of the extreme smallness of the distance there involved, and the consequent supposed improbability of mistake in measuring it; and by which the New York court in the Stigeler and Baldwin and Higginbotham cases was led to the same result, by the trivial circumstance that the parties appeared to have figured correctly, so as to make the specifications of area correspond to those of the dimensions.

Indeed the four fallacies above enumerated will be recognized as the identical propositions to the vindication of which almost the entire briefs of the defendants in error are devoted.

At page 14 of their supplemental brief, defendants adduce authorities claimed to show that the doctrine of the four heretical States has received countenance in twelve other jurisdictions. We elsewhere review these citations, and point out that there is not a single supporting case in the entire list. The only cases outside of the four States which have a tendency to support the positions of the defendants are the few meander-line cases reviewed in our principal brief at pages 125–132, resting confessedly on the overruled doctrine of Granger *vs.* Swart, 10th Fed. Rep., 961, that a meander line is a line of boundary.

Then as to the proposed rejection of the lake as a monument on the theory that the call for it is false or mistaken. In those States, such as Texas, where contrary to the doc-

trine of this court, the land covered by the survey is determinable rather by artificial marks or parol testimony showing where the surveyor actually went, than by reference to the natural landmarks for which he calls, there is a logical basis for the rejection of the latter by mere process of construction, as false or mistaken, *where an actual survey has been made*. Whenever it is legally assumed that the predominant and mutual intention is to convey the land around which the surveyor chained, and he afterwards swears that he did not chain to the monuments which he reported, the latter must be rejected as not enclosing the land which the parties had in view. Such a case was Johnson *vs.* Archibald, 78 Texas, 96. But even in such jurisdictions it is confessedly impossible to reject the monument as false or mistaken where, as in the case at bar, there has been no actual survey. Such was McAninch *vs.* Freeman, 69 Texas, 445–447, where, *because there had been no survey*, a corner of an adjoiner, called for as a monument, was held to prevail over course and distance; it being indicated that only in the event of a monument being proven erroneous by the making in fact of measurements which did not reach the corner, could the call for the corner be regarded as a mistake. Yet while claiming expressly that this is a case where there was no actual survey, and while accusing us of saying with undue solemnity undisputed things when we mass the authorities to show that mere magnitude of discrepancy never breaks the supremacy of

monuments (pp. 1 and 2 of their supplemental brief), the defendants still fatten their briefs with reiterations of the claim that every monument is false which "is not found at the place where designated" (pp. 27, 5, 8, 17, 18, 19, 22, 35, 60 of defendants' principal brief).

When an original instrument can be rejected upon the ground that a copy is better evidence of its contents, and of the intentions of the parties, the monuments of a survey may be rejected in favor of an attempted written description of them and their locations; for, as observed by Mr. Freeman in his note to 30 American Decisions, 738, the rule in favor of monuments "is founded upon the same principle which makes an original paper better evidence than a copy of it."

An equally forcible, though very different, presentation of the logical impossibility of rejecting a monument so long as it can be identified as the object referred to, is furnished by Lord Chancellor Cranworth's opinion in Lyle *vs.* Richards, L. R., 1 E. and I. App., 222, which confirms most strikingly our previous citations to the effect that specifications of distance are to be deemed descriptive of the monuments only, and not a competitive description of the land. On this subject the Lord Chancellor said:

> "Translating, so to say, the map into words, it is as if the description had been 'the boundary to the south is a line drawn from the northeast corner of John Vincent's house, which is situate sixty fathoms

> to the west of the southernmost point of the road,' whereas in fact the house is situate within five fathoms of that point. This inaccuracy would not, as I think, have been material. The boundary line would still be a line drawn from the northeasterly extremity of the house wherever situate, assuming of course that the jurors were satisfied that the house really existing is that which was referred to in the deed. The circumstance that *its locality* was erroneously described would not affect the description of the boundary line, namely, that it was to be a line drawn from its northeast corner. When once the jurors were satisfied that the house is that referred to in the deed, the error *in the description of its locality* is no more material than if there had been error in describing it as brick-built instead of stone-built, or as a house of three stories instead of two. No error is material which would not prevent the jury from being satisfied that the existing house is the house referred to in the deed."

The defendants do indeed cite one case, Bentley *vs.* Rickabaugh, 62 Pennsylvania State, 281, which seems at first blush to support the theory that in case of a discrepancy of great magnitude resulting from mistake or fraud of the surveyor, the monuments may for that reason be subordinated to the courses and distances.

But the appearance of support is a false one. To be read understandingly, the case must be read in the light of the fact that in Pennsylvania equitable relief is administered as a part of the common law, so that habitually in actions of ejectment, juries, by assuming documents to have been

reformed to meet the ends of equity, administer without any pleading specially applicable to it, the same kind of relief which in other courts could only be obtained by an equitable decree of reformation upon the ground of fraud or mistake.

> "Where there is a plain mistake or fraud, the courts of Pennsylvania, through the intervention of a jury, may reform the agreement to make it agree with the deed and make the deed agree with the real title of the parties. In some places the law is not so liberal as that, and the parties may have to go into a court of equity; but here our common-law courts have such equity powers as to enable them to remedy accidents, mistakes or frauds."
>
> Trexler *vs.* Fisher, 130 Pa. State, 275, 278, 279.

So that the Pennsylvania citation merely supports the proposition, which we have not denied, that in the case of gross fraud or mistake relief of some kind may probably be obtained through equitable reformation of the instrument.

It is not unlikely that such confusion as has arisen with reference to the reason of the rule in favor of monuments may be largely traceable to the fact that one clause in the opinion of Chief Justice Marshall in McIver's Lessee *vs.* Walker, 9th Cranch, 173, is so expressed as to make it possible to misconstrue it in the manner now proposed by these defendants (pp. 10 and 11, defendants' supplemental brief).

That the proposed construction is a false one is demonstrable:

(*a.*) The Chief Justice states the reason twice; declaring first that the rule in favor of monuments is a *consequence* of the fact that the intention of every grant is to convey the land according to the actual survey, and then reiterating the same truth in slightly modified form by affirming in direct terms that the fact that such is the intention of the parties is the reason of the rule.

(*b.*) It is only *because* such is the intention—it is only when you are in pursuit of the tract actually demarkated, that mistakes in course and distance are more probable than in the monuments. It is as though the Chief Justice had said: "And in the search for the tract so actually surveyed, mistakes in course and distance are more probable," etc. *Mistakes in course and distance are probable only where it is intended to abandon ideal or mathematical lines for visible boundaries.* If the intention is to convey a tract of given dimensions, as contended here by defendants, the fact is undeniably the opposite; *in such case all the danger of mistake is in the monuments—none whatever in the courses and distances. It may indeed be true that in a certain secondary sense the greater certainty of monuments is the reason for their supremacy; but the reason why they are more certain, and the primary or ultimate reason of their supremacy, is that the object to be attained is the identification of the tract actually demarkated.*

(*c.*) To construe the words of the Chief Justice commencing, "and mistakes in course and distances are more probable," as designed to assign a *second* rather than a *secondary* reason

for the rule, makes his sentence ungrammatical by reason of the absence of the word "that," by which the clause would have been preceded had such been his meaning.

(*d.*) It is not supposable that the Chief Justice, in seeking the reason of the rule in order to ascertain its scope, intended to assign as concurrent two utterly inconsistent reasons, one of which would necessitate the doctrine of this court, "that the universal rule is this, that whenever natural and permanent objects are embraced in the calls these have absolute control, and both course and distance must yield to their influence;" the other of which would lead naturally on to the Texas doctrine, that "there is no rule fixing the effect of any call found in a grant, or giving one more weight or importance than another."

While there is a certain logical relationship between these two reasons when the latter is thrown into a position purely subsidiary and secondary to that of the former, they are of absolutely antipodal tendencies when deployed as concurrent reasons or as two parts of one reason. The former means, as it says, simply, that as a matter of legal construction the intention of the parties always is to convey the demarkated tract. If the latter is construed to mean merely that the monuments are the best identifiers of the tract which was actually demarkated, which is the only sense in which the Chief Justice employed it, then it is at once seen that the latter, as well as the former, is an inflexible proposition. It becomes flexible only when it is

perverted from this meaning, and is so applied as to signify, not that the monuments are the most certain evidence of the demarkated tract, but that they are the most certain evidence of the land intended to be conveyed, whether demarkated or not.

(*e.*) In this connection, Land Company *vs.* Saunders, 103 U. S., 316, adjudicated one of two things, by either of which the defendants are dislodged from the positions now under view. That case cannot be otherwise construed than as determining either that their relative exemption from error is not the primary cause for the supremacy of monuments, or that, if such is the reason, the rule is one which nevertheless operates inflexibly without relaxing in particular instances because the preponderance of certainty by force of particular circumstances passes over from the monuments to the courses and distances. In that case the line of the grant was extended more than a mile beyond the specified distance in order to reach the side line of an adjoining survey known as Hart's location, which was named as the monument. The side line of Hart's location had never been definitely located, was dependent for its location upon a long series of courses and distances named in the Hart grant, and it was, moreover, conceded by this court in its opinion that the parties, in naming it as a monument, probably proceeded upon a mistaken assumption of its true location. If the balance of certainty can ever shift from monuments to courses and distances, it was shifted there. By

evidently accomplished counsel for the losing party it was argued most skillfully and persuasively that the rule of monumental supremacy ceased under such circumstances, it amounting in fact simply to this, that "that which is more certain shall prevail over that which is less certain," from which he argued that the rule is applicable only to monuments capable of being located independently of course and distance, and concerning the location of which no misapprehension could have existed; to all of which this court made answer, "Hart's location is called for, and to that location we are bound to go." That decision was in full accordance with the established law of the States generally where the rule of monumental supremacy is administered in anything like its purity. They hold that the monument prevails, notwithstanding that uncertainty may be shown to have existed as to its location, and although resort to the courses and distances of other surveys may be necessary in order to identify it.

Corn *vs.* McCrary, 48 N. C., 496.

Cansler *vs.* Fite, 50 N. C., 424.

Grabeal *vs.* Powers, 76 N. C., 70.

Younkin *vs.* Cowen, 34 Pa. State, 198.

Caldwell *vs.* Haller, 40 Pa. State, 160.

Ake *vs.* Mason, 101 Pa. State, 17.

In Texas the contrary is of course held.

McGowan *vs.* Hill, 26 Texas, 359–361.

Gerald *vs.* Freeman, 68 Texas, 201.

IV.

Cases involving a repudiation of the doctrine of this court, declared in McIver's Lessee vs. Walker, 9 Cranch, 173, 178, and in the later decisions cited on pages 89-92 of our principal brief, that the supremacy of monuments is not impaired by the fact that they were designated without actual measurements.

Texas is the only jurisdiction from which the defendants are able to cite decisions which can be plausibly claimed to antagonize the doctrine of this court upon this subject. In New York Company vs. Thompson, 83 Texas, 169, the surveyor had been instructed to locate the land warrants upon Devil's river, and it was found by the court that he supposed he had done so. The surveys were also returned and described as abutting upon that river. The court found, however, that he was mistaken as to the location of the river, and that as he had located the lands without actual survey and without actual knowledge as to the location of the river, the call for the river must be abandoned in favor of courses and distances.

It will be noticed that the facts of that case were more extreme than those of the case at bar. The testimony here shows that the surveyor, Howe, ran and blazed the east, west, and the north lines of the entire township, setting

posts at the corners of each of the exterior sections and setting a meander post at the point on the shore of Cedar Island lake where it is first intersected by the north town line as it proceeds from the northeast to the northwest corner of the township. *By reference to Exhibit "B" of the record, found also at page 8 of our principal brief, it will be seen that a person standing at the point where this meander post was erected can completely survey the entire length of Cedar Island lake to its extreme southwesterly limit in section 9.* The surveyor was at the lake and saw practically every part of it. He knew where it was and what it was, and the utmost that can be claimed is, not that he located its boundaries by entirely uninformed conjecture, but that he substituted ocular estimates for detailed measurements.

In Colcough *vs.* Richardson, 1st McCord, 167, the creek which was ignored in favor of courses and distances had not been designated as a boundary. It had been only incidentally pictured as traversing the land. It has been repeatedly held that in such cases the monumental force of the waterway is not as great as where it is depicted as a boundary and the circumstance was relied upon by the court. That case, however, appears to be irreconcilable with the holding in the very similar case of McIver's Lessee *vs.* Walker, 9 Cranch, 173–178. The only other authorities cited in this connection by defendants are the following, none of which are at all in point: Kirwan *vs.* Murphy, 189 U. S., 35–54, merely held that whatever may

be the legal rights of patentees such as these defendants, a threatened resurvey of the land does not involve injury of such a character as to justify its restraint by injunction, and that a due respect for the administrative functions of the Land Office also precludes injunction.

French-Glenn Company *vs.* Springer, 185 U. S., 47–51, was not a case of no survey. The survey had been regularly made, except that it had been terminated upon a swamp instead of being extended to the adjacent lake.

King *vs.* Watkins, 98 Fed. Rep., 913, besides being reversed, as already noticed (55 C. C. A., 290), contained only a dictum that the surveyor's mistake as to the locality of the monument would invalidate it, and even that dictum would be satisfied by the facts of our case, for here it affirmatively appears that the surveyor had a complete view of the entire lake, so that its location was in fact known to him, which is all that the dictum in question requires.

Chapman *vs.* Polack, 70 Cal., 487, cited at page 30, defendants'.principal brief, was not a case of no survey, although it involved a subdivisional line not actually run out, because not required so to be, by the regulations. It is as striking and beautiful an illustration of the supremacy of monuments as can be found in the books. At the time of the survey there was upon the section a building known as the Geyser hotel, which was depicted upon the official plat as returned by the surveyor general. The subdivisional lines of the section, though of course not actually run, were, as

is customary, laid down upon the plat, and exhibited the hotel as standing upon a particular quarter of the section. It was held that the subdivisional lines, when run out upon the ground, must be deflected from their nominal course to such extent as might be necessary to bring the hotel into that quarter of the section where, according to the plat, it belonged.

Beatty *vs.* Robertson, 130 Ind., 589, and Doe *vs.* Hildreth, 2 Ind., 274, cited at page 30 of defendants' principal brief, merely hold that in the event of a discrepancy between plat and field-notes, the former controls; with which doctrine, whether right or wrong, we take no issue.

Chase *vs.* Brandt, 45 Minn., 93, cited on the same page, simply enforced the monuments against discrepant statements of distance.

MISCELLANEOUS POINTS.

In construing that part of the Federal statute regulating the public land surveys which gives supremacy to monuments, it must be recognized as substantially declaratory of pre-existing common-law principles, and not as aiming at the erection of novel and arbitrary regulations, as suggested by defendants. The statute has always been construed as extending the principle of supremacy no less to natural monuments adopted by the surveyor than to artificial marks made by him. The case of Chapman *vs.*

Polack, 70 Cal., 487, cited by the defendants and hereinbefore referred to, is in point. A building standing upon the land at the time of the survey and appearing upon the plat was deemed adopted as a monument, and to be as forceful as the section corners established by the surveyor.

The wide departure of the New York and Massachusetts cases from the doctrine of the Federal courts is attested by the significant fact, disclosed by an examination of Ash's Federal Citations, that none of the New York or Massachusetts cases hereinbefore referred to appear ever to have been cited as authority by a Federal court, except the case of Davis *vs.* Rainsford, cited in 2 Black, 504, and 98 Fed., 250, merely to the effect that the notations of a plat prevailed over specifications of course and distance.

The singular results to which the formulas of the New York and Massachusetts courts naturally lead are illustrated by the case of People *vs.* Jones, 49 Hun., 365, where, applying those formulas, it was held that the conveyance of a lot extending 210 feet to the beach of Lake Ontario conveyed the 210 feet only, although the beach was still 30 feet away.

The supreme court of Minnesota, in its opinion in this case, construed the Shermeier decision as involving not a question of boundary, but of riparian rights. No question of riparian rights was involved in the case. The land there in controversy was a low tract, part of the time an island, lying between the high-water and the low-water mark. Under

the law of Minnesota, the low-water mark of a navigable stream is the dividing line between private and public property, and the only question was whether the low-water mark or the meander line was to be deemed the boundary.

The entire absence of difficulty in distributing among the several parties in interest the area between the meander line and the shore line of the lake is well illustrated by the case of Hanson *vs.* Rice (Minn.), 92 N. W., 982, where, since the decision of the case at bar, it was held by the Minnesota court that the lake there in question was the boundary, though thirty rods beyond the meander line; and the tract between the meander line and the lake shore was held partitionable among the several abutting owners upon the same principle as in cases of reliction.

We may be pardoned for noting here, in conclusion, the fact which should have been mentioned in our opening statement—that by recognizing the lake as its boundary, section 4 is accorded an area of 620 acres, there being about twenty acres of water. Deducting the acreage of the several lots as paid for, conformably to the notations of the plat, Exhibit "A," aggregating 305.11 acres, the excess is seen to be 314.89 acres. The area is therefore slightly more than doubled by recognizing the lake as the boundary.

In our principal brief we suggested that the case should be remanded, with instructions to enter judgment for plaintiffs, as prayed in their complaint. This was not strictly

accurate, since no proofs appear to have been made of the damages prayed for. Judgment should be directed in favor of the plaintiffs for the possession of the lands and for costs.

WM. W. BILLSON,
CHESTER A. CONGDON,
Of Counsel for Plaintiff in Error.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

Nos. 127, 128.

SECURITY LAND & EXPLORATION COMPANY,
PLAINTIFF IN ERROR,

vs.

G. A. BURNS AND MARY L. BURNS, HIS WIFE,
DEFENDANTS IN ERROR.

SECURITY LAND & EXPLORATION COMPANY,
PLAINTIFF IN ERROR,

vs.

HENRY WECKEY AND ROSALINE S. WECKEY, HIS WIFE,

DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

BRIEF FOR DEFENDANTS IN ERROR.

GEORGE P. WILSON,
JOHN R. VAN DERLIP,
R. R. BRIGGS,
Counsel.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

STATEMENT.

These cases, which are in ejectment, come to this court upon writs of error to the Supreme Court of Minnesota, to review judgments of said court dated July 22, 1902, in favor of the defendants in error (record p. 88), affirming judgments entered in District Court for St. Louis county, Minnesota (record, pp. 76, 77), on the 23rd day of December, 1901, after a second trial pursuant to the Minnesota statute (G. S. 1894, Sec. 5845), the first trial also having resulted in judgments for the defendants in error. The two cases, resting upon similar facts, were tried together below, and are in this court on a single record (record, p. 6). The material facts were stipulated in large measure by the parties, and little other evidence was offered or received upon trial (record, pp. 12-16).

The plaintiff in error is a corporation organized and existing under the laws of Minnesota, and the defendants in the respective suits are husband and wife.

The land involved in the two suits lies in section 4 of township 57 north, of range 17 west of the Fourth Principal Meridian, in St. Louis County, Minnesota, and is a part of a tract of more than one thousand acres of unsurveyed government land abutting upon Cedar Island lake, and indicated upon the government plat of the township *as a part of the lake.* (Record, p. 57, par. 7).

In April, 1876, one Howe, a deputy surveyor, entered into a contract with the United States Surveyor General for Minnesota for the survey of said township, by which he undertook and agreed to survey said township, to run out all section lines, and to set posts marking all section and quarter-section corners throughout the township where the same could be marked upon the ground, and accurately to meander and establish upon the ground meander posts of all lakes and streams found to exist within the township (record, p. 56, par. 2). Thereafter, said Howe ran and marked the east, north and west exterior lines of said township (the south township line having been previously surveyed), and set posts at all section and quarter-section corners on said three exterior lines. He also set a meander post upon the north line of said township where said line running west from the northeast corner of said township first encountered the shore of Cedar Island lake (record, pp. 56-7, par. 3). No survey of the interior of the township was ever made, and no section lines within the township were ever run by Howe, with the possible exception of the west line of section 36; and no section or quarter-section corners were ever located, established or marked by him, with the possible exception of the northwest corner of section 36; none of the streams or permanent lakes (of which there were several) within said township were meandered, no posts of any description were ever set, and no lines or bearing-trees ever blazed within the township, with the possible exception of the corner-post at the northwest corner of section 36 (record, p. 57, par. 4).

Said Howe thereafter made and filed with the U. S. Surveyor General for the state of Minnesota, what purported to be field-notes of a survey of said township made by him under said contract, pur-

1160

porting to give the length and direction of all interior lines, the location of all section and quarter-section posts and the bearing-trees thereof, the character of the soil and timber in said township, and all other data and information required by the U. S. statutes and the rules of the U. S. General Land Office to be ascertained and reported by deputy surveyors in due course of making surveys of public lands. With the exception of the description of the survey of the three exterior boundary lines actually run by him, the field-notes returned by Howe were imaginary and fictitious, and the purported facts and data contained therein were not based upon personal knowledge or inspection of the interior of said township, and were, in fact, false and erroneous (record, p. 57, par. 5, 6). From said purported field-notes it appeared that there existed in the northerly part of said township, lying in sections 2, 3, 4, 9, 10 and 11 thereof, a lake designated as Cedar Island lake, with a surface area of 1,800 acres (record, p. 57, par. 7).

The field-notes and report of survey made and filed by Howe were approved by the U. S. Surveyor General for the district of Minnesota, August 7, 1876, and a plat of said township in accordance with the purported field-notes was made under the direction of the Surveyor General, approved by him on the day named, and a duly certified copy thereof transmitted by him to the local U. S. Land Office and another forwarded to the General Land Office and filed therein August 23, 1876, and accepted by that office as representing a correct survey of the township and as the official plat thereof (record, p. 58, par. 8). What purports to be a true copy of said plat will be found opposite page 72 of the record. It is, however, incomplete, but will be corrected by stipulation.

As a matter of fact, at the time of the survey, Cedar Island lake was, and still is, a body of water not exceeding 800 acres in area; it is a permanent, deep and navigable lake, having high, steep and heavily timbered banks, except about the outlet thereof; it does not in fact, touch section 11 at all, and covers an area of less than twenty acres in the southeast corner of section 4. Between the actual water-line of the lake and the meander line thereof as returned by the purported field-notes of said Howe, there were at the time of the survey, and still are, at least 1,000 acres of high, tillable land, which has never been a part of the lake, and which was, and is,

heavily timbered with trees of more than a century's growth, extending down to the water's edge (record, par. 7, p. 57). Exhibit "B" (inserted between pages 72 and 73 of the record) correctly shows the true outline of Cedar Island lake as it now exists and as it existed at the time of the pretended survey, and its true situation with respect to the meander line returned by said Howe.

A portion of the land in section 4, lying between the reported meander line and the true water-line, is the land in controversy in these actions (record, p. 58, par. 8).

The defendants in error have been in actual and continuous occupancy of the lands involved in these actions since the spring of 1892, under the claim that said lands were and are unsurveyed government lands subject to homestead entry, and have made valuable and lasting improvements upon the lands occupied by them respectively (record, p. 58, par. 9).

According to the plat of said township, the land in section 4 was divided into eight government lots, of which six (6) were fractional, lots 1, 2 and 8 (containing an aggregate of 122.3 acres) comprising all the land in the east half of the section, and lots 3, 4, 5, 6 and 7 (containing an aggregate of 182.8 acres) comprising all of the land in the west half of said section. Between December, 1879, and March, 1887, all of said lots were patented and conveyed by the United States, by patents containing the usual clause, "according to the official plat of the survey of said lands returned to the General Land Office by the Surveyor General," and, by mesne conveyances, the title to fractional lots 3, 5, 6 and 7 became vested in the plaintiff in error in the year 1891. According to the township plat and the patents of said lots, they contained, respectively, the following quantities of land: lot 3, 50.87 acres; lot 5, 34.75 acres; lot 6, 30.5 acres, and lot 7, 25.25 acres, a total of 141.37 acres. Plaintiff in error is still the owner thereof and, as such owner, has, within the boundaries of said lots as shown upon said plat and as bounded by the meander line described in the Howe field-notes, the full quantity of land above specified as contained therein (record, pp. 58, 59, par. 10, 11).

The title to government lots 1 and 8 (which are the only lots in the east half of section 4 abutting upon the Howe meander line) became vested, prior to the commencement of these actions, in one

Murphy and his associates, by whom a quit-claim deed was executed and delivered in the year 1892, purporting to grant and quit-claim to the plaintiff in error that part of the southeast quarter of section 4, lying southerly and westerly of a line drawn from the center of said section to the southeast corner thereof, and also all the interest of said grantors in the west half of said section. At the same time, the plaintiff in error executed and delivered to Murphy and his associates a quit-claim deed purporting to convey to them that part of the east half of section 4 lying northerly and easterly of said line drawn from the center of said section to the southeast corner thereof (record, p. 59, par. 11).

In the Burns case, the plaintiff in error claims ownership in fee simple, and the right of immediate possession, of that portion of section four lying west of the north and south center line of the section (record, p. 8), or 320 acres.

In the Weckey case, ownership and right of possession are alleged of that portion of the southeast quarter of section 4 lying westerly and southerly of the straight line drawn from the center to the southeast corner of said section (record, p. 10), or 80 acres, —217.2 acres more than the aggregate quantity (182.8 acres) conveyed by the patents for its five government lots.

If the side lines of lot 1 were extended southerly from the south boundary of said lot, they would encounter the lake in the southeast corner of section 4, and, in that event, lot 1 would appropriate substantially all of the lake frontage in the section, and would contain 139 acres. If the side lines of lot 8 were similarly produced, the east line would encounter Cedar Island lake, but the west line would not, and the lot so extended would contain 106 acres. If the side lines of lot 3 were extended southerly, they would never reach the lake, and the lot so extended would contain 160 acres. If the lines of lot 5 were extended easterly, the northerly line would instantly conflict with the westerly line of lot 3, but if it followed the Howe meander line, and the southerly line of the lot were produced in a straight line, neither would encounter the lake, and the lot so extended would contain 112 acres. If the lines of lot 6 were produced easterly to the section line they would not reach the lake, and the lot would contain 160 acres. If the side lines of lot 7 were extended easterly, the north line would not reach the lake, but the

south line would touch the lake, and the lot so extended would contain 139 acres of land. *But it would be impossible to extend said lots within their respective side lines, as above specified, without instant and irreconcilable interference with each other* (record, pp. 59, 60, par. 12).

The title of plaintiff in error to the fractional government lots 3, 5, 6 and 7 in section 4 is not challenged; hence, in these cases, there is but one

CONTROVERSY PRESENTED.

The ultimate question is: *What are the boundaries of those lots?*

In the consideration of this question, we shall present our argument for the defendants in error under the following general subdivisions:

1. No question but one of boundary is involved in these cases.

2. The Howe survey being fraudulent, the government is affected thereby only so far as it has adopted the survey in the conveyance of its lands in the township.

3. The meander line established by Howe and shown upon the plat is the boundary line of the fractional lots owned by the plaintiff in error.

ARGUMENT.

As preliminary to our discussion, we will state that, in this brief, we employ the term "meander line" for convenient and certain reference to the line constituting the interior boundary of the fractional lots as they are shown upon the plat.

We have received no brief in this court in behalf of the plaintiff in error, and present the case herein for the defendants in error upon the assumption that the contention of the plaintiff in error in this court will be substantially similar to that advanced by it in the Minnesota state courts.

THE CONTENTION OF THE PLAINTIFF IN ERROR

has been that, having bought the fractional lots in reliance upon patents which referred to the township plat, whereon the lots were shown as abutting upon the meander line of Cedar Island lake, such patents and plat *establish conclusively that the lake itself is the boundary of the lots.* The plaintiff in error insists that it is assured by the plat of a frontage upon the lake, and by such assurance is constituted a *riparian proprietor* entitled to pursue the lake until it is encountered, regardless of the facts that no actual survey was ever made; that the field-notes returned by Howe were wholly fictitious and fraudulent; that no lake ever existed at the point indicated by the field-notes or shown upon the plat, and that, by extending its lot lines, the plaintiff in error will acquire more than double the quantity of land which the patents purported to convey. *This theory rests ultimately upon the proposition that the lake is a natural monument which (although confessedly a false one) cannot be disregarded, and must prevail over all other calls of the pretended survey.*

THE CONTENTION OF THE DEFENDANTS IN ERROR.

It is the position of defendants in error that, the survey being fraudulent and the field-notes fictitious, the patents conveyed only the lands lying within the actual lines and distances laid down in the survey, and to the extent of the acreage called for in the patents; that, no body of water existing at the point where the meander line was laid down, the meander line marked the termination of the survey and became the boundary of the fractional lots; that the existence or non-existence of a body of water as the boundary of the fractional lots was a question of fact to be determined by the trial court, and was not concluded by the call for a meander line.

POINT I.

THE ONLY QUESTION INVOLVED IN THESE CASES IS THE INTERIOR BOUNDARY OF THE FRACTIONAL LOTS CLAIMED BY THE PLAINTIFF IN ERROR.

The fractional lots owned by plaintiff in error have their boundaries upon three sides clearly and undeniably fixed by the exterior

lines of the section and the quarter and eighth lines thereof indicated upon the plat. This is not disputed. The boundary upon the fourth side seems to be fixed quite as clearly and undeniably. It is not easy to perceive why, if the plat be conclusive as to three boundaries (for those three boundaries are solely dependent upon their delineation upon the plat), it is not conclusive, also, in respect of the fourth, in view of the conceded fact that Cedar Island lake does not exist, and has never existed, where shown.

Be this as it may, the plaintiff in error *is seeking to establish the interior boundary only* of its premises by asserting that Cedar Island lake is such boundary wherever it may be located. The only line shown upon the plat which the plaintiff in error would change is the meander line. The real question, then, here presented is, as to whether the grant under which plaintiff in error asserts title stops at the meander line shown on the plat or whether it continues beyond that line until the waters of the lake are encountered,—assuming that they could ever be encountered.

Accordingly, it is manifest that the ultimate issue in these cases is one of BOUNDARIES, *and in no possible aspect is any doctrine of* RIPARIAN RIGHTS *involved.* (*In re Burns*, 20 L. D., 28, 31, record, p. 52; *opinion of Judge Cant*, record, p. 62; *opinion of Supreme Court of Minnesota*, record, p. 85; *Bates vs. Illinois Central Railroad Co.*, 1 Black, 204, 207-8; *Horne vs. Smith*, 159 U. S., 40, 41; *Niles vs. Cedar Point Club*, 175 U. S., 300, 308; *Slater vs. Rawson*, 1 Metc. 450, 454; *Lally vs. Rossman*, 82 Wis., 147; *Steinbuchel vs. Lane*, 59 Kan., 10; *Lamprey vs. Mead*, 54 Minn., 290, 299).

The theory of the plaintiff in error, and the authorities which it has cited in this litigation to support that theory, emphasize not only the expediency but the necessity of thus clearly defining the issue. These are suits in ejectment in which the plaintiff in error must stand or fall upon the strength of its own title, and, if there be any doubt as to that title, it must be resolved in favor of the defendants in error, because a doubtful title cannot prevail against possession. Where a survey is uncertain, that construction is to prevail which is most against the party claiming under the survey, because it is his duty to show and establish his boundaries. (*Hill vs. Weir*, 33 Fed., 100; *Scaife vs. Land Co.*, 90 Fed. 238, 247, s. c., 33 C. C. A. 47.)

In the last cited case the Circuit Court of Appeals said:

> "If the plaintiff would recover the land sued for in this action, he must not only show title in himself to the land claimed by him, but he must also show with reasonable certainty that the land which he claims is the land covered by his title papers. To do this, he must show the location of the land described in his title papers."

The mere coincidence that the boundary *claimed* by plaintiff in error chances to be a water boundary does not attach to these cases any question of water-rights.

As this court remarked in *Niles vs. Cedar Point Club, supra,* *"Of course, if the fractional sections did not border on some body of water, there were no riparian rights."*

How far do the lots of plaintiff in error extend? That is the only inquiry, and that is an inquiry as to *boundaries.* In its brief in the state Supreme Court this was conceded by plaintiff in error when it was said:

> "Its [plaintiff in error's] claim is, that, in the direction of the lake, each of these tracts *has only one boundary line,* to-wit, the lake itself; and that the meander line is not a boundary line in any sense or for any purpose."

We are especially insistent upon a clear definition of the issue presented here for the reason that, almost without exception, the authorities which the plaintiff in error has presented to sustain its hypothesis are decisions determining questions of *riparian rights only.*

It has been the constant assertion of plaintiff in error that the meander line is not a factor at all in these cases.

What is a meander line? *Mr. Justice Bradley* said of it:

> The difficulty of following the edge or margin of such projections [the irregularities in the shore-line], and all the various sinuosities of the water-line, is the very occasion and cause of running the meander line which, by its inclusions and exclusions of such irregularities of contour, produces an average result closely approximating to the truth. The official plat made from such survey does not show the meander line, but

shows the general form of the lake adduced therefrom and the surrounding additional lots adjoining and bordering on the same. (*Mitchell vs. Smale*, 140 U. S., 406, 412).

As a consequence, *a true meander line must delimit a stream or body of water*, and if where it is laid down no water exists, or ever has existed, it is not a meander line at all, but must subserve some other end. It is well settled that, in such cases, it marks the termination of the survey and becomes the boundary line of the land which it delimits. (*Granger vs. Swart*, 10 Fed. Cas., 916; *Horne vs. Smith*, 159 U. S. 40; *Niles vs. Cedar Point Club*, 85 Fed. (C. C. A.) 45, affirmed in 175 U. S., 300; *French-Glenn Livestock Co. vs. Springer*, 35 Or., 312, affirmed, 185 U. S., 47; *Fuller vs. Shedd*, 161 Ill., 462, affirmed, *sub nom. Hardin vs. Shedd*, 190 U. S., 508; *James vs. Howell*, 41 O. St., 696; *Lammers vs. Nissen*, 4 Neb., 245; *Bissell vs. Fletcher*, 19 Neb., 745; *Harrison vs. Stipes*, 34 Neb., 431; *Barnhart vs. Ehrhart*, 33 Or., 274; *Glenn vs. Jeffrey*, 75 Ia., 20; *Grant vs. Hemphill*, 92 Ia., 218; *Schlosser vs. Hemphill* (1902) 90 N. W. (Ia.), 842.

There is no question that a *true* meander line is, in law, identical with the water-line which it represents and has no separate recognition. Land bounded by a *true* meander line is, in contemplation of law, bounded by the water-line so depicted. One of the singular features, however, in the contention of the plaintiff in error is, that it refuses—at any rate, fails—to recognize the distinction between *true* meander lines (such as are in question in all the authorities upon which it relies) and false lines laid down (as in the cases at bar) as meander lines, but which neither delimit nor, in fact, have any contiguity to, any body of water, and are merely arbitrary random lines constituting false (and, in this case, purely fictitious) calls in the survey.

The ultimate question involved in these cases being one of *boundaries*, it is palpable that no question of *riparian rights* enters into them, for those are rights which follow, or are connected with, the ownership of land abutting upon streams or bodies of water, and involve the possessory or other rights of such owners in the waters themselves, or in the water-beds. (*Sanborn vs. People's Ice Co.*, 82 Minn., 50; *State vs. St. P. & D. R. R. Co.*, 81 Minn., 424; *Lamprey vs. State*, 52 Minn., 198); hence, before any question of

riparian rights can arise, the person entitled to, or claiming them, must show that he owns the shore; for, if he fail first to establish his ownership, judicial inquiry respecting his rights in or under the waters adjoining are obstructions and useless. (*Bates vs. Ill. Central R. R. Co.*, 66 U. S., 204, 208; *Niles vs. Cedar Point Club*, 175 U. S., 300, 308; *Jones vs. Johnston*, 59 U. S., 150, 157.)

The question here is not what rights plaintiff in error may have in or beyond the shore of Cedar Island lake, *but whether it is the owner of the shore.* Is it pretended to the contrary?

This court, therefore, is not called upon to consider any riparian rights of the plaintiff in error, but merely the boundaries of its fractional lots. It follows that a great deal of excellent law upon the former subject must necessarily prove wholly irrelevant and unpersuasive when sought to be applied to the determination of the latter. Moreover, in every case relied upon by the plaintiff in error, the stream or body of water in which riparian rights were claimed had been actually surveyed, and the meander lines described in the surveys and shown upon the plats had been actually laid down with approximate correctness with reference to the actual *situs* of the water.

POINT II.

THE HOWE SURVEY BEING FICTITIOUS AND FRAUDULENT WAS NOT BINDING UPON THE GOVERNMENT, EXCEPT AS IT HAS BEEN ADOPTED AND LANDS HAVE BEEN GRANTED BY REFERENCE TO THE PLAT.

No dispute exists in respect of the fictitious and fraudulent character of the Howe survey (record, par. 4, 5, 6, p. 57; decision of Sec. of Interior, record, p. 52; *Kirwan vs. Murphy*, 189 U. S., 35).

The *Kirwan case* involved the survey now under consideration and practically determines the cases at bar.

Howe, the deputy surveyor, was an agent of the government, having limited powers, both under his contract and under the statute. It is a recognized rule that public agents cannot bind the government by acts outside of, and in violation of, their authority. (*Whiteside et al. vs. United States*, 93 U. S., 247, 257; *Moffat vs. United States*, 112 U. S., 24, 31; *Hume vs. United States*, 132 U. S., 406, 414; *Kirwan vs. Murphy*, 189 U. S., 35, 54).

In the *Hume case* this court said:

"In order to guard the public against losses and injuries arising from the fraud, or mistake, or rashness, or indiscretion, of their agents, the rule requires of all persons dealing with public officers the duty of inquiry as to their power and authority to bind the Government; and persons so dealing must necessarily be held to a recognition of the fact that government agents are bound to fairness and good faith, as between themselves and their principal."

In *Moffat vs. United States, supra,* the Government repudiated certain patents for public lands upon the ground that they had been fraudulently issued, and this court declared:

"The position that, as the frauds were committed by officers of the United States, the court erred in not holding their acts to be binding, and in not giving to the patents the force of valid conveyances, is certainly a novel one. The Government does not guaranty the integrity of its officers nor the validity of their acts. It prescribes rules for them, requires an oath for the faithful discharge of their duties, and exacts from them a bond with stringent conditions. It also provides penalties for their misconduct or fraud, but there its responsibility ends. They are but servants of the law and, if they depart from its requirements, the Government is not bound. There would be a wild license to crime if their acts, in disregard of the law, were to be upheld to protect third parties, as though performed in compliance with it."

Again, in *Whiteside vs. United States, supra,* we find this language:

"Different rules prevail in respect to the acts and declarations of public agents from those which ordinarily govern in the case of mere private agents. * * * Although a private agent, acting in violation of specific instructions, yet within the scope of his general authority, may bind his principal, the rule as to the effect of the like act of a public agent is otherwise, for the reason that it is better that an individual should occasionally suffer from the mistakes of public officers or agents, than to adopt a rule which, through improper combinations or collusion might be turned to the detriment and injury of the public. Mayor vs. Eschbach, 18 Md., 282.

1160

"Individuals as well as courts must take notice of the extent of authority conferred by law upon a person acting in an official capacity, and the rule applies in such a case that ignorance of the law furnishes no excuse for any mistake or wrongful act."

In *Kirwan vs. Murphy, supra*, this language was used:

"The administration of the public lands is vested in the Land Department, and its power in that regard cannot be devested by the fraudulent action of a subordinate officer outside of his authority and in violation of the statute."

The theory of the plaintiff in error, that the government is estopped to question its claim, is plainly untenable.

The purpose of showing, or finding, fraud or error in the survey is not to impeach or avoid the patents under which plaintiff in error claims—their validity and efficacy are conceded, but to make clear the situation upon the ground and the facts relative to the pretended survey, in order to arrive at the extent of the grant to the patentees.

(*Cavazos vs. Trevino*, 73 U. S., 773, 784; *Boardman vs. The Lessees, etc.*, 6 Pet., 328, 345.)

It was remarked by this court in *French-Glenn Livestock Co. vs. Springer*, 185 U. S., 47, 51:

"While it may be conceded that the description of the lots contained in the survey, plats, and patents, are conclusive as against the Government and holders of homesteads so far as the lands actually described and granted are concerned, such conclusive presumption *cannot be held to extend* to lands not included within the lines of the survey, and which are only claimed because of *the alleged existence* of a lake or body of water bounding said lots."

But an estoppel can be no broader than the representation upon which it is sought to be based. The effect of an estoppel is to prevent the party against whom it is invoked from showing the truth; hence arises the rule that an estoppel must be reciprocal, certain as to every intent, and that it cannot be extended by mere argument or inference. (11 *Eng. & Am. Enc. Law (2nd ed.)*, 388.)

Furthermore, it is to be remembered that, where a grant emanates from the sovereign, it is construed more strictly than a grant by a private person. Thus, in *Shively vs. Bowlby*, 152 U. S., 1, 10, *Mr. Justice Gray*, in delivering the opinion of the court, wrote:

> "It was argued for the defendants in error that the question presented was a mere question of construction of a grant bounded by tide water, and would have been the same as it is if the grantor had been a private person. But this is not so. The rule of construction in case of such a grant from the sovereign is quite different from that which governs private grants. The familiar rule and its chief foundation were felicitously expressed by Sir William Scott: 'All grants of the Crown are to be strictly construed against the grantee contrary to the usual policy of the law in the consideration of grants; and upon this just ground, that the prerogatives and rights and emoluments of the Crown being conferred upon it for great purposes, and for the public use, it shall not be intended that such prerogatives, rights and emoluments are diminished by any grant, beyond what such grant by necessary and unavoidable construction shall take away.' The Rebecca, 5 C. Rob. 227, 230. Many judgments of this court are to the same effect. Charles River Bridge Proprs. v. Warren Bridge Proprs. 36 U. S. 11 Pet. 420, 544-548 (9:773, 822-824); Martin v. Waddell, 41 U. S. 16 Pet. 367, 411 (10:997, 1013); Central Transp. Co. v. Pullman Car Co., 139 U. S. 24, 49 (35:55, 64)."

> "Public grants convey nothing by implication; they are construed strictly in favor of the King." (*United States vs. Arredondo*, 6 Pet., 691, 738.)

Except, therefore, as it has granted lands to *bona fide* purchasers according to the plat made from the fictitious survey, the Government is not bound thereby, and, as to those parts of the township outside the representation made by the lines of the plat, it is in no degree estopped by its patents.

Whether the interior boundary of the lots of the plaintiff in error was an existing lake, was a question of fact for the determination of the trial court, and was not concluded by a mere call for a meander line.

(*French-Glenn Livestock Co. vs. Springer*, 185 U. S., 47; *Niles vs. Cedar Point Club*, 175 U. S., 300, 308; *Russell vs. Maxwell Land Grant Co.*, 158 U. S., 253, 259; *Cavazos vs. Trevino*, 73 U. S., 773; *Jones vs. Johnston*, 18 How., 150; *Johnston vs. Jones*, 66 U. S., 209, 217; *Menasha Wooden Ware Co. vs. Lawson*, 70 Wis., 600; *Shoemaker vs. Hatch*, 13 Nev., 261, 266; *Fuller vs. Shedd*, 161 Ill., 462; *Lammers vs. Nissen*, 4 Neb., 245; *Schlosser vs. Hemphill*, 90 N. W. Rep., (Ia.) 842; *Barnhart vs. Ehrhart*, 33 Or., 274; *Granger vs. Swart*, 10 Fed. Cas., 961).

In *French-Glenn Livestock Co. vs. Springer, supra,* plaintiff, as owner of certain fractional lots,, shown on the plat of the government survey thereof as abutting upon the meander line of Malheur lake, brought the action to eject defendant from possession of a tract of about 160 acres lying between the meander line and said lake, and claimed by plaintiff to be a part of his fractional lots. As stated by *Mr. Justice Shiras* (page 50),

> "The contention of the plaintiff in error was in the courts below, and now is in this court, that, as the plaintiff in error bought in reliance upon the plats and patents which showed the meander line of the lake, such plats and patents must be deemed to conclusively establish that the lake was the northern boundary of the land so far as the rights of the riparian grantees were concerned."

The defense was: That, at the time of the survey, there was no lake in front of said lots; that Malheur lake is, and at the time of the survey was, a well defined lake lying northeasterly from the lots; that the lake never extended to the supposed meander line, and that there had never been any recession of the waters so as to constitute the land in controversy reliction.

The positions of the respective parties were precisely similar to those of the parties here.

The trial court held that these were questions of fact which were not concluded by the patent, and this position was affirmed by the Supreme Court of Oregon, and in turn by this court, which said (page 51):

"As this question was submitted to the jury and found against the plaintiff in error, such finding conclusively determines *the controversy*. * * * We agree with the Supreme Court of Oregon in thinking that the question whether the northern boundary of the lots of the plaintiff in error was an existing lake, the recession of whose waters would leave the bed of the lake, thus laid bare, to accrue to the owner of the lots, was a question of fact which was not concluded by a mere call for a meander line. * * * The jury having found that the facts under this issue were as claimed by defendant in error, the conclusion must be that the rights of the plaintiff must be regarded as existing within the actual lines and distances laid down in the survey, and to the extent of the acreage called for in the patents, and that the meander line was intended to be the boundary line of the fractional section."

In other words, there is no estoppel in these cases to show the truth and to demonstrate that Cedar Island lake does not now approach, and has never approached, the meander line shown upon the plat as the boundary of the fractional lots in question.

It follows, as a logical and necessary conclusion from the foregoing premises that

POINT III.

THE MEANDER LINE SHOWN BY THE PLAT CONSTITUTED THE INTERIOR BOUNDARY OF THE GOVERNMENT LOTS OWNED BY THE PLAINTIFF IN ERROR.

This proposition is supported by all the authorities, and rests upon the following reasons:

1. Plaintiff is the undisputed owner of the full quantity of land demanded by its patents, and none of the defendants is in possession of any part thereof.

2. Such land conforms to the description thereof in the patents, and there is no occasion for the extension thereof by construction.

3. The pretended survey was palpably fraudulent and did not conclude the government, and plaintiff in error and its predecessors in title were bound to take notice of the fact.

4. The land occupied by defendants in error has never been surveyed, either actually or theoretically, and, therefore, was not subject to patent.

5. The "natural monument" demanded by plaintiff in error did not exist as respects its fractional lots, and was a false call.

6. There was no intention to convey by the patents under which plaintiff in error claims more or other than the land shown upon the plat, either in respect of area or contour.

7. The meander line marked the termination of the survey in section 4.

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1. PLAINTIFF IS THE UNDISPUTED OWNER OF THE FULL QUANTITY OF LAND DEMANDED BY ITS PATENTS, AND NONE OF THE DEFENDANTS IS IN POSSESSION OF ANY PART THEREOF.

2. SUCH LAND CONFORMS TO THE DESCRIPTION THEREOF IN THE PATENTS, AND THERE IS NO OCCASION FOR THE EXTENSION THEREOF BY CONSTRUCTION.

These propositions are expressly found as facts by the court (record, par. 9, 11, pp. 58, 59; par. II, p. 61).

3. PLAINTIFF IN ERROR AND ITS PREDECESSORS IN TITLE WERE BOUND TO TAKE NOTICE THAT THE PRETENDED SURVEY WAS FRAUDULENT AND DID NOT CONCLUDE THE GOVERNMENT.

The references to the record and the language from the authorities, cited under point II of this brief, show the fictitious nature of the survey and its inconclusive effect upon the government, and need not be repeated here.

It needs no argument to support the assertion that the plaintiff in error and its predecessors in title were bound to take notice thereof, for the principle is commonly recognized that every purchaser of land is charged with knowledge of all documents and records through which his title is derived (16 *Am. & Eng. Enc. of Law, 1st ed.*, 798; 23 *id., 2nd ed.*, 508, and citations in notes; *Ames vs. Lowry*, 30 Minn., 283; *Briggs vs. Ripley*, 37 Minn., 78; *Cannon vs. Emmons*, 44 Minn., 298; *Pinney vs. Russell*, 52 Minn., 443). Including the records of the General Land Office (*Ware vs. Easton*, 46 Minn., 181; *Coursolle vs. Weyerhaeuser*, 69 Minn., 335.)

The further rule is equally recognized that surveys of public lands are "conclusive and binding upon all persons having to deal with the United States, as well as upon the government itself" (*Mann vs. Tacoma Land Co.*, 44 Fed. Rep., 27, 29; *Niles vs. Cedar Point Club*, 85 Fed Rep., 45, 52; *Niles vs. Cedar Point Club*, 175 U. S., 300, 306, 308; *Bates vs. Illinois Central R. R. Co.*, 66 U. S., 204; *French-Glenn Livestock Co. vs. Springer*, 185 U. S., 47, 51).

There is no basis, consequently, for the assertion by plaintiff in error of any estoppel as against the government—under which defendants in error must derive their title when the lands are surveyed.

4. THE LANDS OCCUPIED BY THE DEFENDANTS IN ERROR HAVE NEVER BEEN SURVEYED AND HAVE NEVER BEEN SUBJECT TO PATENT.

The regulations governing surveys and the disposition of public lands, as disclosed by sections 2275, 2355, 2395, 2396, 2397, 2403, *et al.* of the Revised Statutes of the United States, and by Act of May 14, 1880, Sec. 3, and other statutes, require that all public lands must be surveyed before they can be granted by the government. It is not open to question that a patent conveys only land which is surveyed. (*McIver's Lessee vs. Walker*, 9 Cranch, 173, 178; *West vs. Cochran*, 17 How., 403, 407; *United States vs. Pacheco*, 22 How., 225, 226; *Buxton vs. Thayer*, 130 U. S., 232; *Niles vs. Cedar Point Club*, 85 Fed. (C. C. A.), 45, 52; *same case affirmed*, 175 U. S., 300, 306; *Horne vs. Smith*, 159 U. S., 40, 44-5; *French-Glenn Livestock Co. vs. Springer*, 185 U. S., 47, 52; *Lammers vs. Nissen*, 4 Neb., 245; *Boynton vs. Miller*, 22 Ia., 579; *Glenn vs. Jeffrey*, 75 Ia., 20; *Grant vs. Hemphill*, 92 Ia., 218; *Schlosser vs. Hemphill*, 90 N. W. (Ia.), 842, 843; *opinion of Mr. Justice White in Kean vs. Calumet Canal & Improvement Co.*, 190 U. S., 498.)

The fact that the lands in suit have never been surveyed is explicitly found (record, p. 57, par. 4; p. 81), is not disputed by the plaintiff in error, and was distinctly recognized by this court in *Kirwan vs. Murphy*, 189 U. S., 35, 52. Hence, if we assume that, by the issuance of its patents according to the plat of the pretended Howe survey, the Government has adopted it to that extent, the

1160

scope of the grant to the predecessors in title of plaintiff in error will be discovered by ascertaining the limitation of the survey so adopted. Turning our attention to that inquiry, we find that:

5. THE "NATURAL MONUMENT" DEMANDED BY PLAINTIFF IN ERROR DID NOT EXIST AS RESPECTS THE FRACTIONAL LOTS OF PLAINTIFF IN ERROR AND WAS A FALSE CALL.

This demand of the plaintiff in error is mistakenly based upon the accepted doctrine announced in *Cragin vs. Powell,* 128 U. S., 691, 696, in these words:

> "When lands are granted according to an official plat and their survey, the plat, with its notes, lines descriptions and land marks, becomes as much a part of the grant or deed by which they were conveyed, and, as far as limits are concerned, controls, as much as if such descriptive features were written out on the face of the deed or grant itself."

And because Cedar Island lake appears upon the plat in question as the boundary of the fractional lots, plaintiff in error relies, further, upon the familiar rule applied in *St. P. & P. R. R. Co. vs. Schurmeier,* 7 Wall., 272, to the effect that meander lines are not run as boundaries, but for the purpose of defining the sinuousities of the banks of streams or other water bodies, and that, in the language of this court,

> "In preparing the official plat from the field-notes, the meander line is represented as the border line of the stream, and shows to a demonstration that the water-course, and not the meander line, as actually run on the land, is the boundary."

It will thus be seen that the contention of the plaintiff in error rests upon these two postulates:

(1) That the plat is a part of the patents; and

(2) That because Cedar Island lake is shown upon the plat as the boundary of the fractional lots, this representation becomes conclusive that the lots abut upon the lake, wherever found, for the reason that the lake constituted a natural monument which will prevail over all other calls in the survey.

All that the first factor compasses is, that, by reference to a plat, a conveyance of land transfers the property as if it had been described in detail by the courses, distances and boundaries marked upon the plat. (*Murdock vs. Chapman*, 75 Mass., 158).

It is submitted that the rule in *Cragin vs. Powell* fully supports the contention of the defendants in error, inasmuch as the government plat of township 57 indicates the exact contour and proportions of the fractional lots described in the complaint, and that they are bounded by lines of such length and character as to enclose the exact acreage called for by the patents, and which the court has found is actually possessed by the plaintiff in error (record, p. 59).

The vice in the application of the rule attempted by the plaintiff in error lies in its disregard of the facts (a) that a plat is only a pictorial delineation of the actual survey, and (b) that reference to a plat in a deed of conveyance is, in fact and in law, a reference to the *survey*, which the plat purports to represent. (*Chinoweth vs. Lessee of Haskell*, 3 Pet., 92, 96; *Heath vs. Wallace*, 138 U. S., 573, 583; *Niles vs. Cedar Point Club*, 175 U. S., 300, 306; *McClintock vs. Rogers*, 11 Ill., 279; *McCormick vs. Huse*, 73 Ill., 363, 374; *Edward vs. Tarbox*, 7 Me., 61; *Heaton vs. Hodges*, 14 Me., 66; *Williams vs. Spaulding*, 29 Me., 112; *Chan vs. Brandt*, 45 Minn., 63, 64-5; *Ferch vs. Konne*, 78 Minn., 515; *opinion of Supr. Ct. of Minnesota*, record, p. 86; *Hall vs. Davis*, 36 N. H., 569; *Steele vs. Taylor*, 3 A. K. Mar., 225; *Jackson vs. Freer*, 17 Johns., 29; *Hart vs. Evans*, 49 Tex., 311; *Turner vs. Ry. Co.*, 112 Mo., 542).

> "The map was intended to represent the relative situations and localities of the lots as regarded each other; the actual survey was the practical location; and although the patents do not specifically refer to the field-book and the actual survey of the lots, they virtually refer to them by referring to the map composed from the survey, and the lots acquired their individuality from the survey also. Without, therefore, any express reference to the field-book or survey, the reference to the map was a reference to its accompaniments, the field-book and the survey." (*Jackson vs. Freer, supra.*)

> "Where, in a patent from the United States, the land is only described by numbers and quarters, we have to look at the plat *and field-notes* of the public surveys in order to locate the land.

These are to be construed as if incorporated into the patent itself." (*McClintock vs. Rogers*, 11, Ill., 279.)

Without the field-notes the plat has no significance (*Wilson vs. Hoffman*, 54 Mich., 246); hence, the pronouncement in *Cragin vs. Powell* that, "the plat, with its *notes, lines, descriptions and land* "*marks* becomes * * * a part of the grant * * * and "*as far as limits are concerned, controls as much as if such de-* "*scriptive features were written out on the face of the deed or grant* "*itself,*" makes the field-notes a part of the grant. This is in line with the principle referred to which charges every purchaser of land with knowledge of all documents and records through which he derives title.

Moreover, as we have just seen, surveys of public lands are as conclusive upon all persons acquiring such lands, as upon the Government itself.

The doctrine that a call for a natural monument has supremacy over courses, distances and quantities named in a grant, rests solely upon the presumption that monuments are less liable to be mistaken than the other calls; if, consequently, the monument does not exist, or is itself a mistake, the presumption disappears, and the rule cannot be invoked.

It must be remembered that this presumption touching monuments is *a rule of construction only*, adopted by the courts to enable them to arrive at the true *intention* of the parties to a grant, and that when the reason for the application of the rule fails, it ceases to have force.

There are three grounds for refusing to observe the rule in these cases: *first*, because the call for the lake is admitted to be false; *second*, because the congress has adopted special and exclusive rules for the identification of lands surveyed and sold by the Government, and, consequently, for determining the intention of the parties; *third*, because the intention of the parties to the contrary is clear.

First: The Supreme Judicial Court of Massachusetts has said: "The only reason given, or which can be given, why monuments are to control the courses and distances in a deed is, that the former are less liable to mistakes. If, then, it appears that no mistake can reasonably be supposed to have been made,

no reason remains for the application of the rule." (*Davis vs. Rainsford,* 17 Mass., 207, 210.)

Given, then, the adjudged fact that Cedar Island lake is a fictitious and false call, it cannot be said to be "less liable to mistake" than the courses and distances laid down in the field-notes and based upon the township line actually run by the surveyor and plainly marked upon the ground.

"The rule that monuments prevail over course and distance *does not apply to mistaken or false calls,* as in a case like this, where the evidence conclusively shows that the surveyor was mistaken or ignorant of the location of the monuments called for and of the local geography of the * * territory in which he was locating the survey." (*King vs. Watkins,* 98 Fed. Rep., 916, 924. See, also, *Scaife vs. Land Co.,* 90 Fed. Rep., 238, 245; *Railway Co. vs. Stigeler,* 61 N. Y., 350; *Murdock vs. Chapman,* 75 Mass., 156; *New York Co. vs. Thompson,* 83 Texas, 169; *Lamprey vs. Mead,* 54 Minn., 290, 299).

"It is true that, as a general rule, monuments, natural or artificial referred to in a deed, control on its construction, rather than courses and distances; but this rule is not inflexible. It yields whenever, taking all the particulars of the deed together, it would be absurd to apply it. For instance, if the rejection of a call for a monument would reconcile other parts of the description and leave enough to identify the land and render certain what was intended to be conveyed, *it would certainly be absurd to retain the false call."* (*White vs. Luning,* 93 U. S., 514, 524).

"If there never was a lake in front of plaintiff's lots, or if one did not exist there at the time of the survey, *then there was no natural object or monument marking the boundary of said lots;* hence resort must be had to secondary evidence, viz., the courses and distances which are ascertainable from the plats and surveys, and they must prevail. The result is natural, and the land conveyed would be just what a methodical calculation would produce from the field-notes of the survey of the fractional sections and the supposed meander line." (*French-Glenn Livestock Co. vs. Springer,* 35 Or., 312, quoted and affirmed, 185 U. S., 47, 53).

In *King vs. Watkins, supra,* it appeared that the commonwealth of Virginia patented to Robert Morris a tract of land said to contain 500,000 acres. The tract was delimited by boundaries calling for various natural monuments referred to and named in the field-notes of the survey. Two corners of the tract were clearly established and marked by the surveyor upon the ground, but the other corners of the survey were not actually located by him nor were the intervening lines actually run. The plaintiff claimed to be the owner of the land patented to Morris, while the defendants claimed title under subsequent patents. By following the courses and distances given in the field-notes the tract of 500,000 acres claimed by plaintiff would be exactly enclosed; by following the calls for natural monuments, namely, certain *creeks* and *rivers* and certain trees at the mouth of a creek that was named, the tract would contain only about 111,000 acres. The defendants insisted that the natural monuments must control over courses and distances under the familiar rule, and that, as a consequence, their patents covering lands lying outside of the lines running between such monuments were valid. The two points actually established by the surveyor ("A" and "B") could be found upon the ground. With reference to the defendant's contention that monuments must control, the court said:

> "These monuments mentioned in the survey are placed by the original surveyor at locations widely different from the positions they are shown to occupy by the actual surveys in this case. *That the surveyor, Taylor, was mistaken* in the location of these calls, *or was ignorant of their true location* relative to the lines laid down on the plat accompanying his survey, is shown by the testimony of the expert surveyors, and by the papers, grant, survey, and plat in the case, when applied to the actual geography of the country. On this ground the plaintiff asked the court to instruct the jury that these mistaken or false monuments are to be disregarded, and that the boundary lines, except the lines from "A" to "B," shall be established by the courses and distances stated in the survey and grant. The contention of the defendants that the boundary lines shall be run according to the calls for these mistaken or false monuments instead of by the courses and distances, is based on the familiar principle that natural or reputed boundaries or lines of marked trees ought to be established in preference to mere course and distance."

After referring to *White vs. Luning*, 93 U. S., 514, and *Hutchinson on Land Titles*, Secs. 529, 535, holding that monuments were relied upon only because they are *less liable to mistake*, but that where the reason for the rule failed the rule would likewise fail, the court continued with the language first quoted in this subdivision of this brief, following it with this:

> "The calls for monuments relied on by defendants in the case at bar are surely *random calls*, and the rule which holds that monuments must prevail over course and distance *does not apply to such calls*. To hold differently would give the rule an extension that has not received the sanction of any court, and that cannot be sustained by the reasons given for its adoption. An attempt to locate the survey according to the defendant's contention, and in harmony with natural monuments, disregarding the given courses and distances, gives results that would only come from the gravest mistakes in the calls for natural objects. The courses and distances are shown to be right by the fact that, when platted out, they plat back exactly to the beginning point in the form shown by the original plat, and embrace the precise quantity called for."
>
> "Such errors in the location of and call for natural objects could not occur in the case of actual survey, but are such as would almost invariably result from an intent to lay down so large a tract of land by protraction in a wilderness country, in which there was no established geography, and of which the surveyor, as shown by the evidence, had no correct knowledge. 'The general rule that the intention of the parties is to be ascertained in determining the proper construction of the contract, applies with the same effect to matters of description, in deeds and other conveyances, as to covenants and condition therein.' *Hutch. Land Titles*, Sec. 527. That it was the intention of the commonwealth to grant 500,000 acres of land to Robert Morris, and of Robert Morris to accept title to that quantity, cannot be questioned by the documentary evidence, such as the plat, survey and grant. That this intention would be defeated by adopting the construction contended for by the defendants does not admit of discussion. For the reason stated, the monuments on which the defendants must rely to establish their theory of the true boundary of the survey in controversy must be disregarded, and the boundaries must be ascertained by courses and distances."

The facts and reasoning of the case just cited are exactly in point under the contention of the plaintiff in error here that Cedar Island

lake is a natural monument which must be given supremacy over every other call of the plat or field-notes. It is insisted that the paramount influence of this call for a natural monument is due to the purpose of the surveyor to bound the fractional lots upon Cedar Island lake, but, as we have just seen where the surveyor is *mistaken* as to the location of the natural monument, and has based his survey thereon in ignorance of its true situation, the rule giving priority to the natural monument is instantly discarded, because it cannot apply to a mistaken or false call. Such reference to a natural monuments constitutes merely a *random call*, as to which the rule invoked by the plaintiff in error never applies.

In *New York Land Co. vs. Thompson*, 83 Tex., 169, the land company asserted title to certain lands under a location thereof which it claimed to have made prior to the location of Thompson. The state of Texas had issued to the International & Northern Railroad Company a large number of land certificates, some of which having been transferred to the land company it caused them to be located and surveyed on land situated upon and near Devil's river. It was the surveyor's intention, and the direction of the land company, to place the surveys on Devil's river, and the surveyor (one Kuechler) supposed that he had so located the surveys and run out the survey of the land. As a matter of fact, he made no actual survey on the ground, but from certain corners which he actually established on the ground he plotted out the survey and made calls in the field-notes for Devil's river. He was mistaken as to the true course of the river. It made a considerable bend from a point near the place where he established the southwest corner of the survey, and ran two or three miles to the east of where he supposed it was, when it deflected and again ran to the south in the course assumed by the surveyor. Upon the discovery of the error in the survey returned by Kuechler, Thompson, who held land certificates of the state which he was entitled to locate upon any unsurveyed lands, caused them to be located upon lands abutting upon Devil's river, where it made the detour referred to, which lands were supposed to have been included in the survey made for the land company. Unless the calls for course and distance should be disregarded and the calls for Devil's river observed, a small portion only of the original locations would be upon any part of the land in controversy. Thompson having brought his action against the land

company to try the title, the case resulted in a judgment in his favor, from which the land company appealed. The Supreme Court affirming the judgment said:

> "There are but two controlling questions in this case: (1) whether the calls for Devil's river, made in the original surveys of Kuechler, should be extended so as to cross the river, or should yield to course and distance; (2) [a question not material here].
>
> "If it should be ascertained that the calls for Devil's river in the field-notes of the original surveys should control, then the most of the land in controversy would apparently be covered by the original location. * * * Kuechler intended to place the surveys on Devil's river, but in his attempt to do so he evidently mistook the true course of the river.
>
> "It is true that the remaining surveys were not run out upon the ground, but were plotted in on his map. They were plotted in, however, from initial points fixed and clearly defined upon the ground. Kuechler may have intended to appropriate the land up to and across the river, but, as he did not know where the river actually was, *no random call therefor will control course and distance where there is a clearly defined starting point.* It would be utterly at variance with all the rules upon the subject so to hold. *These surveys must be run out and plotted in accordance with the field-notes,* the call for Devil's river yielding to the calls for course and distance. *Sanborn vs. Gunter* (Tex. Sup.), 17 S. W. Rep., 120, 121. And the attempt or intent to locate them upon the river would not be an equitable appropriation of the land. They are west of the portion of the land in controversy across the river from it, and, if run out in accordance with calls for course and distance, would include no part thereof."

It is obvious that, if Cedar Island lake had no actual existence at all outside of the imagination of the deputy surveyor, and the entire township were land of the character of that in controversy, the plaintiff in error would be required to relinquish wholly the claim which it now asserts. The reason for such relinquishment of its claim would be simply that the call, in the survey, for a lake, no lake existing in the township, was a *false call* which, by reason of its non-existence, must be wholly disregarded, and the extent of the grant to the plaintiff in error would be determined by other calls of the field-notes. This obvious truth demonstrates the correctness of the contention presented by the defendants in error,

1161

because the fact is distinctly found that there was no lake in the township where plaintiff in error was entitled to seek for it, and, as far as the plaintiff in error is concerned, the lake is non-existent. The call for the lake was not only erroneous but *fraudulent*, and the government is in no manner compromised by the fraud of the deputy surveyor, and its grants under his pretended survey are effectual only as to the land actually described and paid for.

These positions have been thoroughly considered and approved by this court (*Bates vs. Illinois Central R. R. Co.*, 66 U. S. 204; *Horne vs. Smith*, 159 U. S., 40; *Niles vs. Cedar Point Club*, 175 U. S., 300; *French-Glenn Livestock Co. vs. Springer*, 185 U. S., 47; *Kirwan vs. Murphy*, 189 U. S., 35), and have received without dissent the approval of all other courts in which they have been presented for adjudication. (See point III of this brief, subdiv. 7, *post.*)

The "absurdity" contended for by plaintiff in error is made more manifest in the suits here when, as the fact has been established (record, pp. 59, 60), the lake is a monument impossible to be reached. (*Bissell vs. Fletcher*, 19 Neb., 745.) If the plaintiff in error or the patentees, its predecessors in title, may be said to have been notified by the plat that they would find a lake at the interior boundary of their lots, they certainly were not authorized to believe that they could seek it elsewhere. When, therefore, they did not find such water boundary at the place designated, they were, *ipso facto*, advised that the plat had given them a false monument, and "the rights of the plaintiff in error must be regarded as existing "within the actual lines and distances laid down in the survey, and "to the extent of the acreage called for in the patents." (*French-Glenn Livestock Co. vs. Springer*, 185 U. S., 52; *Boardman vs. Lessees, etc.*, 6 Pet., 328, 345; see, also, *United States vs. Pacheco*, 17 How., 225; *McEwen vs. Den*, 65 U. S., 242; *King vs. Watkins*, 98 Fed., 913, 924; *New York Co. vs. Thompson*, 83 Tex., 169.)

Second: In pursuance of the constitutional authority (U. S. Cons., Art. IV, Sec. 3, par. 2), Congress has enacted exclusive rules for the construction of grants, and the identification of lands conveyed by the Government (U. S. Rev. Stat., Secs. 2395, 2396).

This system of public surveys was early adopted by the congress

as the sole method of surveying and disposing of government lands. Being purely statutory, grants of public lands must be scrutinized and construed by the courts with reference to the statutes, and the statutes must be given their true interpretation and force. (*McClintock vs. Rogers,* 11 Ill., 279, 295; *Chan vs. Brandt,* 45 Minn., 93, 96).

Express provisions of the statute must prevail over rules adopted and applied by courts with reference to the construction of descriptions which are not based upon government surveys, where such rules are at variance with the statutory directions.

The marked feature of this system is that the statute gives supremacy to *artificial* monuments and lines as returned by the surveyor.

Section 2395, after providing for certain methods to be observed in making surveys, by subdivision 8th requires:

That surveyors' field-books shall be *returned to* the surveyor general, who shall cause therefrom a description of the whole lands surveyed to be made up and transmitted to the officers who may superintend the sales. He shall also cause a fair plat to be made of townships, and fractional parts of townships, contained in the lands surveyed, *describing the subdivision thereof* and the marks of the corners.

Section 2396 prescribes:

"First. All the corners marked in the surveys, *returned* by the surveyor general, shall be *established* as the proper corners of sections, or subdivisions of sections, which they were intended to designate; and the corners of half and quarter sections, not marked on the surveys, shall be placed as nearly as possible equidistant from those two corners which stand on the same line.

Second. The boundary lines actually run and marked in the surveys returned by the surveyor general, shall be established as the proper boundary lines of the sections, or subdivisions, for which they were intended, and the length of such lines, as returned, shall be held and considered as the true length thereof. And the boundary lines which have not been actually run and marked shall be ascertained, by running straight lines from the established corners to the opposite corresponding corners; but in those portions of the fractional townships where no such opposite corresponding corners have been or can be fixed, the boundary lines shall be ascertained by running from the established corners due north and south or east

and west lines, as the case may be, to the water course, Indian boundary line, or other external boundary of such fractional township.

Third. Each section or subdivision of section, the contents whereof have been returned by the surveyor general, shall be held and considered as containing the exact quantity expressed in such return; and the half sections and quarter-sections, the contents whereof shall not have been thus returned, shall be held and considered as containing the one-half or one-fourth part, respectively, of the returned contents of the section of which they make a part."

If we analyze the statute, we find, as far as is here material:

1. That all the corners *marked* in the surveys *returned by the surveyor general* shall be *established* as the corners of sections and subdivisions of sections. Such *corners,* therefore, are not to be controlled by any natural monuments.

2. That if the surveyor general has *not* "marked" the half and quarter section corners, they shall be placed, as nearly as possible, equidistant from those two corners which stand on the same line.

3. That the boundary lines actually run *and marked in the survey returned by the surveyor general* shall be "established" as the proper boundary lines of the sections *or subdivisions.* (*Goltermann vs. Shiermeyer,* 111 Mo., 404; *James vs. Howell,* 41 Ohio St., 696).

4. That, where such boundary lines have not been actually run and marked, they shall be ascertained by running straight lines from the established corners to the opposite corresponding corners, if the subdivision be not fractional.

5. That, in fractional subdivisions, where no such opposite corresponding corners have been or can be fixed, the boundary lines shall be ascertained by running from a corner duly established, *due north and south or east and west lines,* as the case may be, *to the water-course,* Indian boundary, *or other external boundary* of such fractional subdivision.

> If there be no water-course or Indian boundary at the point indicated as making the subdivision fractional, the "other external boundary" of the statute *"may be forest or prairie, land or water, government or Indian reservation."* And, *if it be land,* the rights of the patentee do not extend over the meander line. (*Niles vs. Cedar Point Club,* 175 U. S., 300, 308.)

When no survey is made in the field, the lines of the chamber-survey of the surveyor general become, therefore, the "established" and controlling boundaries. (*Chapman vs. Pollock*, 70 Cal., 494; *Goltermann vs. Shiermeyer, supra; James vs. Howell, supra; Beatty vs. Robertson*, 130 Ind., 589; *Doe vs. Hildreth*, 2 Ind., 274; *N. Y. Co. vs. Thompson*, 83 Tex., 169; *Chan vs. Brandt*, 45 Minn., 93.)

6. That each subdivision of a section, *the contents whereof have been returned by the surveyor general*, shall be held and considered as containing *the exact quantity expressed in the return.*

It is very evident from these careful provisions that *the design was to provide arbitrary rules*, which should affect all parties alike, and by which the boundaries of tracts of land should be definitely, and with absolute certainty, ascertained, whether to the detriment of the government or of the purchaser.

It will be observed that no reference is made to *natural* monuments nor is it expressed that they are recognized as of any force whatever. The law only provides for *artificial* monuments, that is, those made and designated by the surveyor general for the very purpose of fixing and controlling the boundaries of the survey. There is no need, under this system, to apply any rules of construction to ascertain and determine the intent of the parties. The officers of the government are conclusively presumed, in selling the public domain, to sell it in accordance with the provisions of law. The purchaser is presumed to purchase with knowledge of the law, and the only intent which he can be heard to assert is that he expected to receive that which has been, or will be, ascertained to be his due upon strict compliance with the law. The law enters into his contract and forms a part of it.

Taking sections 2395 and 2396 together, it is obvious that the plat is intended to serve the purpose of representing in map form the result of the survey, but the length and location of the lines of the various subdivisions are to be ascertained solely from the lines as marked in the survey returned as actually run and established by the surveyor. Hence, of necessity, a purchaser of public lands is remanded always to the marks on the ground, if discoverable, or, in their absence, to the survey returned, to ascertain the exact boundaries of any tract purchased by him (*Goltermann vs. Schiermeyer,*

111 Mo., 404), and particularly would this be true where the most superficial view of the premises would indicate the absence of established lines upon the ground. Hence, there was imposed upon the patentees of the government lots now owned by plaintiff, the duty of ascertaining from the field-notes of surveyor Howe the boundaries of those lots, when it became apparent—as it would instantly—that Cedar Island lake could not, by any possibility, bound the lots in question. (*Whitney vs. Detroit Lumber Co.*, 78 Wis. 240; *McCormick vs. Huse*, 73 Ill., 363, 373-4).

Now, the meander line, with every station and variation, as established by the survey, is exactly described in the field-notes, and shown upon the plat, so as to delimit with precision each of plaintiff's lots. When so delimited, it is shown by mathematical calculation that the lots contain the exact areas recited in the patents therefor.

Hence, we are given two sets of absolute data from which plaintiff's lands and the intent of the parties can be ascertained: *first*, the exterior corners marked upon the ground, and, *second*, the established meander line of the lake, both incontestable. (*French-Glenn Livestock Co. vs. Springer*, 185 U. S., 47, 54).

It is merely a matter of measurement, running the lines from the corners established on the exterior of the section to the water-line *as actually run and established by the surveyor and approved and adopted by the government.* (*Chan vs. Brandt*, 45 Minn., 93).

The water-line so established is as conclusive as any other line. *The government has the option to declare and fix what* SHALL BE DEEMED *the water-line for the purpose of a survey and sale of public lands.* (*Bates vs. Ry. Co.*, 66 U. S., 204, 208; *Niles vs. Cedar Point Club*, 175 U. S., 300, 307; 85 Fed., 45; *Horne vs. Smith*, 159 U. S., 40, 45).

The Bates case cited is the forerunner of *Horne vs. Smith* and *Niles vs. Cedar Point Club*, in recognizing that so-called meander lines may be boundaries.

In that case, a survey was made of land represented to be bounded on the south by the Chicago river running due east into Lake Michigan. In fact, the river, before emptying into the lake, turned abruptly south and reached the lake at a different point, leaving a long spit of land between the river and the lake. The survey showed the river running directly into the lake, omitting the turn toward the south. Plaintiff, claiming under patent for the

lot bounded southerly by the river as thus shown, sued in ejectment for the spit of land mentioned. This court held: That is was immaterial where the mouth of the river was in fact, because "the "public had the option to declare the true mouth of the river, *for the "purposes of a survey and sale of the public land,"* and the meander line shown upon the plat was pronounced to be the southerly boundary of plaintiff's land.

Even if the cases at bar were taken to present an instance of a lost monument, because the "natural monument" demanded by the plaintiff in error is not found upon the ground, the rule is undoubted that it must be located from the field-notes and plats of the original survey. In so doing, resort must be had to known lines and monuments as the basis on which to run out and locate the original lines of the fractional lots. (*French-Glenn Livestock Co. vs. Springer,* 35 Or., 312; affirmed, 185, U. S., 47, 53; *Boardman vs. Lessees, etc.,* 6 Pet., 328, 345; *McEwen vs. Den,* 65 U. S., 342; *King vs. Watkins,* 98 Fed., 913, 914; *Stadin vs. Helin,* 76 Minn., 496, 501-2; *Thompson vs. Trowe,* 82 Minn., 471; *McClintock vs. Rogers,* 11 Ill., 279).

As to the *Schurmeier case* (7 Wall. 272), so strongly relied upon by plaintiff in error, we desire to point out specifically (what we have already stated generally in respect of all the authorities cited by plaintiff in error) that the case involved purely and simply a rule of *riparian rights.* There, a meander line was actually run along the Mississippi river, and the subdivisional lines of the section ran to the river. The land in dispute was a sand-bar lying in the stream, and, briefly stated, the controversy was whether a fractional government lot, *confessedly bounded by a river,* stopped at the water's edge, or extended to the navigable waters of the stream, so as to include the sandy island or bar referred to. The fact that plaintiff was a riparian owner was conceded, and only the extent of his riparian privileges and estate was in dispute. The contention was made that the meander posts on the bank marked the boundary of the patented lands, but the court held otherwise, in the familiar language relied upon by plaintiff in error.

The rule of that case was correct as applied to the facts of that

case; but it can have no application or force when invoked—as it is by the plaintiff in error—with reference to an entirely different state of facts presenting no question of riparian rights.

This distinction is explicitly recognized and pointed out in *Grant vs. Hemphill*, 92 Ia., 218, where the facts cannot be distinguished from those in the case at bar, and where the same contention was presented by the plaintiff as is relied upon by the plaintiff in error in these cases. It was also recognized, and the scope of the decision carefully defined, in *Shively vs. Bowlby*, 152 U. S., 1, 38-9. See, also, *opinion of Supreme Court of Minnesota* (record, p. 84); *Shoemaker vs. Hatch*, 13 Nev., 261, 266; *James vs. Howell*, 41 Ohio St., 696.

In addition to the *Schurmeier case*, the cases of *Hardin vs. Jordan*, 140 U. S., 384, and *Mitchell vs. Smale*, 140 U. S., 406, are chiefly relied upon by plaintiff in error, and are said by its counsel to be sufficiently conclusive as to preclude the necessity for other discussion.

These cases are so well known as to demand little comment, and we will content ourselves by saying that, in the former, the questions to be decided were, (a) What law determines the rights of *riparian owners* in the bed of a *non-navigable* but *meandered* lake from which the water has disappeared?; and (b) If the state law, what is that law?

It was held that the law of the state where the property is situated controls, and that the common law prevails in Illinois. As to the issue in that case, *Mr. Justice Bradley* said:

> "The controversy here is between *the riparian owner* and a party claiming the land under water in front of him."

In the *Mitchell* case (which concerned the same lake and survey, and which was tried and decided at the same time as *Hardin vs. Jordan*), the controversy was over a jut of land extending out into the lake from a fractional lot confessedly abutting upon the water.

In those cases (and in all the cases cited in behalf of the plaintiff in error) it was conceded that the meander lines had been actually run along the margin of water existing where shown on the plat, and that the water was the boundary of the patented lands. (See opinion of Supreme Court of Minnesota, record, p. 85).

In the cases at bar, it is conceded that the meander line was never run at all, and that Cedar Island lake did not exist within an approximate distance of a mile from the location shown on the plat.

In each of the two cases last referred to, *Mr. Justice Bradley* guarded the application and scope of the decisions by saying, in the first:

> "There should be some extraordinary proof of mistake on the part of the surveyor, in order to interfere with the passing of the land as riparian land."

In the second case he said:

> "Cases have happened in which, by some mistake, the meander line described by a surveyor in the field-notes of his survey did not approach the water-line intended to be portrayed. *Such mistakes, of course, do not bind the Government.*"

Here, instead of *mistake* it is found that there was *deliberate fraud,* and, as a result, the effect of the pretended meander line to extend the grants to the actual body of water, wherever found, was destroyed.

The argument for the defendants in error might well be rested here. If it be true that the fact of Cedar Island lake appearing upon the plat as the boundary of the fractional lots, is not controlling, in case it is a false call, then the plaintiff in error has no support for these suits, inasmuch as they rest, in the last analysis, upon the single proposition that *the plat shows a water boundary upon that lake.* It has been found as a fact that the call of the plat is false, and this court has held that, in such case, the call must be rejected. Consequently, the cases for the plaintiff in error have nothing upon which to stand.

Nevertheless, we will consider the third ground (*ante., p.* 21) for refusing to observe the rule of the *Schurmeier case,* namely, that the intention of the parties to the original grant to the contrary is clear under every rule of construction.

6. THE GOVERNMENT STANDS IN THE POSITION OF ANY OTHER PROPRIETOR AS RESPECTS THE CONSTRUCTION OF ITS GRANTS, AND THERE WAS NO INTENTION TO CONVEY MORE OR OTHER THAN THE LAND SHOWN UPON THE PLAT, EITHER IN RESPECT OF CONTOUR OR AREA.

By an elementary rule, in the construction of a deed, effect is to be given to the intent of the parties. Intent is variously disclosed.

(a) It is not to be disputed that the United States, as an incident of sovereignty, can contract like any other grantor. That it can bound its grants by whatever limits it may fix is, therefore, an indisputable proposition. Having the right to determine when and how the public domain shall be surveyed, it has power to establish a line in the midst of a prairie, or forest, and to issue patents for the lots bounded by such lines. Hence, it could restrict the grant of the fractional lots in section 4 to the meander line shown upon the plat as a boundary. (*Niles vs. Cedar Point Club,* 175 U. S., 300, 308). The presumption, then, ordinarily is, that it was the intention to terminate the survey at the point indicated upon the plat. Undoubtedly, if at such point a body of water exist, it will become the boundary, but, if none be there, the line so laid down must mark the boundary of the survey, otherwise, there is no such thing as an "established" line.

In these cases, it is conceded that there was no actual survey, and that the interior boundary of the fractional lots was established by the surveyor arbitrarily, and without reference to any actually existing object. The presumption, then, becomes conclusive that the intention was to convey nothing beyond the meander line shown upon the plat (*Niles vs. Cedar Point Club, supra,* p. 306).

(b) An important element to be considered in discovering the true intent of the parties to a grant is the *distances* named in the description.

The field-notes show explicitly the course and length of every varying line bounding the fractional lots. It would be quite valueless to introduce excerpts from them here, but the particular descriptions of importance will be found at pages 32, 35 and 36 of the record.

According to the field-notes, and the plat as well, the distance from the northeast corner of section 4 (which was actually marked upon the ground by the surveyor) to the meander line, is 26 chains and 10 links; the distance from the southwest corner of the section to the meander line is 12 chains and 10 links; the survey gives exact courses and distances for the meander line connecting these points.

Exhibit "B" (record, p. 82) indicates that the distance from the section line to the actual lake varies from three-quarters of a mile to a mile and a quarter.

The case of *Horne vs. Smith*, 159 U. S., 40, determines the conclusive effect of these facts. That was ejectment by plaintiff to recover certain lands in possession of the defendant. Plaintiff's title rested on a patent conveying lot 7, section 23, and lots 1 and 2, of section 26, containing "170 acres, according to the official plat of the survey of said lands returned to the general land office by the surveyor general." The lands in question were bounded on the west by a meander line noted on the plat as defining Indian river. The length of the lot lines from the east boundary to the meander line was shown to be 30 chains. As a matter of fact, the meander line shown on the plat delimited a bayou connecting with Indian river between which and the river was a tract occupied by defendant, containing about 600 acres of upland extending in width, in some places, a mile and a quarter, and covered with live oak trees of large diameter. This land was not formed by accretion after the making of the survey.

In an opinion holding that the plaintiff could not recover, *Mr. Justice Brewer* said:

> "The contention of the plaintiff is, that, inasmuch as this body of land is not shown upon the official plat, and, although the boundaries and areas of the three lots are given, the latter aggregating only 170 acres, the patent of the lots conveys all the land to the main body of the river; in other words, a patent for 170 acres conveys over 700. The basis of this contention is the familiar rule that a meander line is not a line of boundary, and that a patent for a tract of land bordering on a river conveys the land not simply to the meander line, but to the water line."

The court below charged the jury that the patent had reference to the field-notes and map of the survey; that a meander line ordi-

narily is not a boundary, but that the water represented is the true line; that, nevertheless, the rule has its limitations, as in cases where long distances intervene between the meander line and the water-line; and that the case in question fell within the exception to the rule.

> "Whatever criticisms," said *Mr. Justice Brewer*, "may be placed upon this instruction, we think that, as applied to the facts of this case, the rule of the court was substantially correct. * * * *The distance from the east line of the section to the meander line is given*, and which is less than a quarter of a mile, while the distance from such east line to the main body of the river must be in the neighborhood of a mile and a half."

The decision of that case rested upon the considerations that a patent will not convey unsurveyed land, and that the Government had no *intention* of conveying 700 acres when it patented only 170. This intention was disclosed by the facts that the land in dispute lay beyond the meander line shown on the plat; that it had never been surveyed; that the river was in another section and the lots could not extend to it, and that *the plat showed the precise length of the boundaries from the section line to the meander line.*

It follows that there was no intention to include the land in dispute here in the grants made to the patentees of the fractional lots in section 4, but that those grants were limited by the distances shown in the field-notes and on the plat.

(c) In arriving at the true extent of a grant, *quantity* is an important element in determining the intention of the parties.

In interpreting a patent, the entire description must be taken and the identity of the land ascertained by a reasonable construction thereof, rejecting, if necessary, any erroneous call. (*Boardman vs. Lessees, etc.*, 6 Pet. 328, 345; *Lessee of Croghan vs. Nelson*, 3 How., 187, 194; *Case vs. Dexter*, 106 N. Y., 554; *Ry. Co. vs. Stigeler*, 61 N. Y., 348, 350-1; *McCormick vs. Huse*, 73 Ill., 363, 373-4; *Rioux vs. Cornier*, 75 Wis., 570; *Hostetter vs. Ry. Co.*, 108 Cal., 38.) Especially is this the case where a survey was not actually run upon the ground. (*Platt vs. Vermillion*, 99 Fed. Rep. (C. C. A.), 356, 367).

When the starting point is beyond dispute (as in the cases at bar),

and the definite metes and bounds of the survey close, there can ordinarily be no doubt of the location of the tract; but when, in addition, the area embraced within such boundaries is the precise quantity specified in the conveyance, the demonstration is conclusive as to the intention of the parties respecting the location of the disputed line. (*King vs. Watkins*, 98 Fed. Rep., 913, 924; *McCormick vs. Huse, supra; Hostetter vs. Ry. Co., supra*).

No actual survey having been made in these cases, there is no room for any presumption of intent on the part of the Government beyond the purpose to grant to the patentee the quantity paid for and recited in the patent; on the contrary, the presumption of an intention to convey only the quantity of land named in the patents becomes conclusive. Fractional lots 3, 5, 6 and 7 were sold and paid for as containing an aggregate area of 141.37 acres. These lots, except lot 3, which is platted as containing 50.87 acres, were fractional *forties*, and were so noted upon the plat. The statute requires public lands to be subdivided by the surveyor into full forty-acre tracts, if possible (U. S. Rev. Stat. § 2397). The patentees knew that they were buying less than forty acres in these tracts, and did not intend to buy more; they understood, and the Government understood, that Howe did not intend to survey enough land to make them full forties. If extended so as to comprise the land claimed in these suits, the four lots would embrace 359.56 acres; in like manner, all the fractional lots surrounding Cedar Island lake, with an aggregate area of only 595.76 acres, would, if extended, contain more than 1,500 acres.

As said by *Mr. Justice Brewer* in *Horne vs. Smith*, "the area of "the lots is given, and when that area is stated to be 170 acres, *it "is obvious* that no survey was *intended* of over 700 acres." Again, in *French-Glenn Livestock Co. vs. Springer* (185 U. S., 47), this court said, with reference to the claim of the plaintiff in error for land lying beyond its meander boundary:

> "The land in dispute in possession of the defendant in error was not included within the lines of the original survey, nor in the description of the lands contained in the patents and in the deeds of conveyance under which the plaintiff in error holds, and to add the land in controversy to the lots so described would more than double the area of the land claimed by plaintiff in error. * * * The jury having found that the

facts under this issue were as claimed by the defendant in error, the conclusion must be that the rights of the plaintiff in error must be regarded as existing within the actual lines and distances laid down in the survey, and to the extent of the *acreage* called for in the patent."

(d) Another convincing demonstration of the true intent of the Government is found in the fact that ***the United States has no title to land covered by the waters of navigable lakes,*** but such title is vested in the State within which such waters are situated, in trust for the public use. The United States has no property therein which it can convey, and the State is powerless to divest itself of the trust. (*Niles vs. Cedar Point Club,* 85 Fed. Rep., 45, 50, affirmed, 175 U. S., 300, 308; *Ill Central R. R. Co. vs. Illinois,* 141 U. S., 387, 435; *Lamprey vs. State,* 52 Minn., 181, 198; *Ill. Steel Co. vs. Bilot,* 109 Wis., 418, declaring that a title which, on the face of the plat, might appear to be conveyed, would be defeated by evidence showing that the premises in question were naturally a part of the bed of a navigable lake.)

According to the plat and field-notes, the waters of Cedar Island lake, a navigable body of water (stipulation of plaintiff in error, record, pp. 13, 14; decision, p. 57), extended to the meander line returned by Howe. It is impossible to presume an intention to convey, by reference to the plat, any land lying beneath the waters of the lake ***as shown upon the plat,*** to which the Government had no title, and which it knew (under the rule just referred to) it was powerless to convey.

(e) Again, the patents describe the land as being in section *four.* The lots, therefore, cannot go to the lake, in any event, within the express limitation of their grant. It has been shown that the interior lines of a section are "established" lines of equal potency with section lines themselves, and it was this consideration which led to the adoption of the rule declared in *Whitney vs. Detroit Lumber Co.,* 78 Wis., 240, to the effect that, if a water boundary be not found within the lines of a forty, it cannot be pursued beyond such subdivision. If there be any foundation for the claim made by the plaintiff in error, there is no more reason why the lots should terminate at the *section line* in the search for their true boundary, the

lake, than that they should stop at any quarter or eighth line. If they cannot be extended to the lake for any reason, *ipso facto*, the lake is demonstrated to be a false call, and the grant must be limited to the boundaries indicated upon the plat.

But this question is set at rest by the decision of this court in *Horne vs. Smith, supra.* In that case, as we have seen, the lots in question appeared upon the plat to be bounded by the Indian river whereas there existed between the meander line returned and the Indian river several hundred acres of high land. In discussing the matter, this court took occasion to say:

> "In the second place, the meander line as shown on the plat is, so far as these lots are concerned, wholly within the east half of sections 23 and 26, while the water-line of the main body of the river is a mile or a mile and a half west thereof, in sections 22 and 27. * * * Further, the description in the patents is of certain lots in sections 23 and 26, and, manifestly, that *was not intended* to include lands in sections 22 and 27."

It is clear, then, that the lines of these lots cannot be extended to reach the lake in sections 3 and 9.

To avoid this manifest obstacle, plaintiff in error urges that the lines of the fractional lots may be deflected to accommodate the lots to any water frontage that may be available. This contention is palpably fallacious. It overrides the statute requiring that all the lines in public surveys shall be straight lines running east and west and north and south, and it demonstrates that unless the meander line be the boundary, the patents must be void for uncertainty, since there is no possible legal method of determining to what point the lines must be deflected inside or outside the section.

It must be conceded:

(1) That whatever land was conveyed by the patents of the fractional lots, the title thereto vested in the patentees the instant the patents were delivered; because claims under patents cannot extend beyond the boundaries therein described (*West vs. Cochran*, 17 How., 402, 413).

Nothing has been added to the grant since that time; the patents speak as of their date.

> "The rights of the patentee were limited to the very lands which were conveyed to her." (*Niles vs. Cedar Point Club*, 175 U. S., 300, 308.)

(2) That the land so conveyed was at once susceptible of ascertainment from the terms of the patents.

> "It is an obvious principle that a grant must describe the land to be conveyed, and that the subject granted must be identified by the description given of it in the instrument itself." (*Chinoweth vs. Lessees of Haskell*, 3 Pet. 92, 96; see also, *Brown vs. Huger*, 21 How., 305, 318).

(3) That the boundaries of the grant were governed by some definite rule of law controlling in all cases presenting facts calling for its application (*McEwen vs. Den*, 65 U. S., 242, 247).

If such boundaries were not fixed by the patents, the grants were void for uncertainty. (*Buyck vs. United States*, 15 Pet., 215, 224-5; *Muse vs. Arlington Hotel Co.*, 68 Fed. Rep., 637, 643-4; *Boardman vs. Lessees, etc.*, 6 Pet., 328).

There is no merit in the suggestion of the plaintiff in error that the patentees or their successors in interest must determine between themselves their respective boundaries.

Whenever the question in any court, state or federal, is whether the title to land which has once been the property of the United States has passed, that question must be resolved by the laws of the United States (*Wilcox vs. Jackson*, 13 Pet., 498, 517). What are those laws was answered by this court in the recent case of *Kirwan vs. Murphy*, 189 U. S., 35, as follows:

> "Sections 2395, 2396 and 2397 of the Revised Statutes, specify the manner of making surveys of public lands, and prescribe the rules by which the *form* and *boundaries* of the tracts are determined."

See, also, *Niles vs. Cedar Point Club*, 175 U. S., 307.

If, then, the patentees acquired from the United States only the land comprised within the meander line indicated on the plat, the plaintiff in error can claim no greater rights or estate. A purchaser of property takes only such title as his seller has and is authorized to transfer. *Nemo dat quod non habet.* He acquires precisely the interest which the seller owns, and no other or greater. *Nemo plus*

juris ad alium transferre potest quam ipse habet (*Barnard vs. Campbell*, 55 N. Y., 456, 461; *Russell vs. Maxwell Land Grant Co.*, 158 U. S., 253, 259).

Hence, the question of title in plaintiff in error is referred back to the actual title acquired by the patentees.

Now, what did the patentees take, and how could they determine their boundaries?

If the fractional lots extended to the lake at the time the patents were issued, they were projected, either in straight lines or by deflected lines. We have seen that public surveys are absolutely the creatures of the statute. The lots in question are *fractional.* What is the statute?

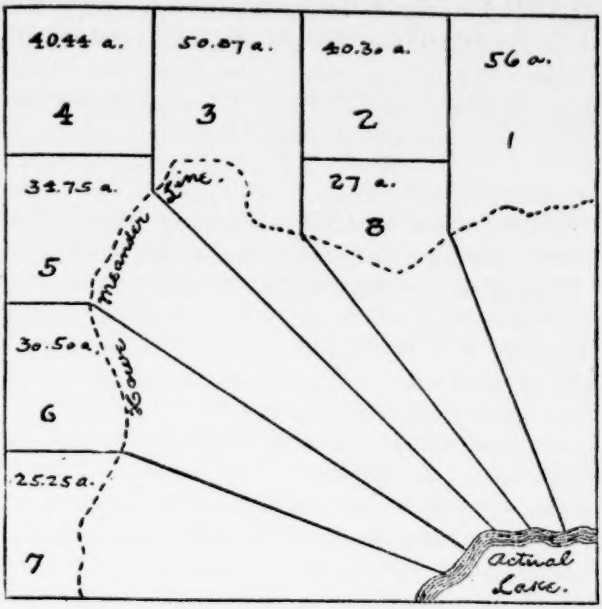
Where the sections are fractional, "boundary lines shall be ascertained by running from the established corners due north and south or east and west lines, as the case may be, to the water course," etc. (U. S. Rev. Stat. §2396). Hence, no line in a government survey can ever be deflected or run in any direction except north and south or east and west. Moreover, in the absence of statute, grants are assumed to be in rectangular form. (*Massie vs. Watts*, 6 *Cranch*, 148, 165; *Ferguson vs. Bloom*, 144 Pa. St., 565).

The moment any rectilineal extension of any one of the lots in question is attempted, there is instant and irreconcilable interference with the extension of every other lot (record, p. 60).

The patentees, therefore, acquired nothing by an extension of their lots beyond the meander line in straight lines.

If the lots extend beyond the meander line, at all, then, it must be along deflected lines, as suggested by plaintiff in error. It is clear that the only mode in which the lot lines can be deflected so as to give all of the lots a frontage upon the lake, is by concentrating them upon the small 20 acre portion of the lake in the southeast corner of the section.

According to the method of converging lines, the patents for the various fractional lots conveyed, *at the moment of their delivery and by their own terms,* tracts substantially as indicated by the following sketch:



Can it be seriously contended for a moment that, in issuing its patents, there was any *intent* on the part of the Government to convey, or any expectation on the part of the patentees to receive, any such bodies of land as are indicated by the foregoing sketch? *If so, what becomes of plaintiff's reliance upon the plat?* Does the plat convey any intimation that a purchaser of the fractional lots in section 4 would acquire such extraordinary tracts? Does the survey which the plat depicts evidence an intention to make such a division of the land?

This inquiry, too, has been fully answered by this court.

"If there never was such a lake—no water forming an actual and visible boundary—*on* the north end of the lots, it would seem unreasonable, either *to prolong the side lines of the survey indefinitely until the lake should be found, or to change the situs of the lots laterally in order to adapt it to a neighboring lake.*" (*French-Glenn Livestock Co. vs. Springer*, 185 U. S., 47, 53).

The plaintiff in error, therefore, is not claiming according to the plat, but is asking the court to assign to it land not indicated by the

survey as belonging to its lots, and to do what the court has no power or jurisdiction to do, namely, to make or correct a government survey. (*Cragin vs. Powell,* 128 U. S., 691, 697, et seq.; *Kirwan vs. Murphy,* 189 U. S., 35; *Chan. vs. Brandt,* 45 Minn., 93, 94).

(f) The presumption is that all grants are made with reference to an *actual view* by the parties of the premises conveyed. The reason for holding a natural monument superior to courses and distances is that, being visible and distinct on the ground, it is presumably in the minds of the parties and is probably intended to be controlling (*Moran vs. Lezotte,* 54 Mich., 90). From this has arisen the legal presumption referred to.

In consequence, the presumption of any *intent* to bound the fractional lots by Cedar Island lake is instantly dissipated, for an actual view would show that the lake had no existence where the meander line was laid down on the plat. Instead, dense forest existed, and informed the parties that the meander line did not mark a body of water, but simply the limits of the survey. The presumption, therefore, is, that the Government, as well as the patentees, had actual knowledge of the location and character of the premises. *Then the question is presented, whether the Government, being possessed of such knowledge, intended to convey more land than the number of acres recited in the patent.*

Where there is no evidence that any other line than that described in the survey was known or imagined at the time of the entry of the lands, the parties will be presumed to have meant the grant to be bounded by the line described (*Heywood vs. Lumber Co.,* 70 N. H. 24).

Certainly it cannot be presumed that the patentees, having viewed the premises, supposed that the Government intended to include in a conveyance any other tract or any greater quantity of land than was described.

> "If there was no lake to meander, the purchaser could not have bought upon the representation that there was, and cannot become a riparian owner, and therefore can claim none of the rights appurtenant thereto." (*French-Glenn Livestock Co. vs. Springer,* 35 Or., 312).

Obviously, therefore, the intention of the parties to the patents, as gathered from the application of the accepted canons of construction, was, as in the ordinary instances of conveyance by reference to a plat, to grant the fractional lots of the township and area specified, and lying within the lines laid down, upon the plat.

7. THE MEANDER LINE RETURNED BY THE DEPUTY SURVEYOR AND DRAWN UPON THE PLAT, MARKED THE TERMINATION OF THE SURVEY, AND IS THE BOUNDARY LINE OF THE LAND OF THE PLAINTIFF IN ERROR.

We have seen that there is no controversy in these suits over any boundary except that indicated on the plat as the meander line; that the purported field notes of the survey of this township were made and returned by Howe, the deputy surveyor, without personal knowledge or inspection of the interior of the township, and that they were fictitious and fraudulent; that the meander line described in the field-notes was established by Howe arbitrarily and without reference to the actual water-line of Cedar Island lake, and did not approach the lake within a distance varying from one-half of a mile to a mile; that no survey of the lands in the township has ever been made; that a patent will not convey unsurveyed land; that Cedar Island lake is a confessedly false call, which must be rejected in determining the extent of the grant under which plaintiff in error claims, and, as a result, it must be run out in accordance with the field notes, and that the courses and distances of the survey exactly close and embrace the full quantity of land called for by the patents.

This court has already passed upon certain phases of this controversy (*Kirwan vs. Murphy*, 189 U. S., 35, 52, 54). It has recognized that *"no survey was in fact made, no meander line "was in fact run, and no body of water in fact existed near the false "meander line indicated;"* and has declared that "the administration "of the public lands is vested in the Land Department, *and its power "in that regard cannot be divested by the fraudulent action of a "subordinate officer outside of his authority and in violation of the "statute."*

Except, therefore, to the extent that the Land Department has conveyed land and received pay for it in accordance with the fraudu-

lent survey, the Government still retains title to the lands in the township.

In *James vs. Howell*, 41 O. St., 696, it appeared that certain lands in the vicinity of Lake Erie were surveyed, and a meander line run making certain fractional sections. The meander line delimited a marsh bordering upon the lake, and, at the edge of the marsh, and between it and the lake, were certain sandy ridges designated upon the plat as islands. Under patents issued in 1844 for the fractional sections plaintiff claimed the ownership of that portion of the islands which lay within those fractions if extended to the full section limits, which the surveyor had indicated upon the plat by dotted lines. In 1876, the defendant applied for and obtained a patent covering the islands referred to. The Supreme Court, sustaining the defendant's title, held:

First. Although the patents read "according to the surveyor general's plats," they must be so construed as to give effect to their true intent and meaning. But the common rule favoring the grantee as against the grantor does not apply to patents because the grantor is the government. *Second.* The statute providing that boundary lines actually run and marked in the surveys returned by the surveyor general shall be established as the proper boundary lines of the subdivisions for which they were intended, and the length of such lines as returned shall be held and construed as the true length thereof, the plaintiff could take no more than the actual area delimited *by the lines shown upon the plat*, including the meander line, such lines, in contemplation of law, being actually run, marked and returned. *Third.* The decision in the *Schurmeier* case holding that meander lines are not boundaries but merely indications of the water-line by which the tract is to be bounded, *does not apply to such a case. Fourth.* The meander line, as delineated upon the plat, limited the grant under plaintiff's patents.

In his opinion subsequently delivered in the Circuit Court for the northern district of Ohio, upon the trial of the suit of Niles vs. Cedar Point Club (quoted by Judge Lurton in the Circuit Court of Appeals, 85 Fed. Rep., 54), *Mr. Justice Harlan* said of this case: "I concur entirely with what was said in James vs. Howell, 41 O. St., 696."

That suit of *Niles vs. Cedar Point Club* involved a similar con-

troversy—though between different parties—growing out of the same survey. The decision of *Mr. Justice Harlan* at circuit was affirmed by the Court of Appeals for the sixth circuit in a luminous decision reported in 85 Fed. Rep., 45,, and the decree of that court was affirmed here in a decision reported in 175 U. S., 300.

Mr. Justice Brewer, writing the opinion of this court, said (pages 305-8):

"But little can be added to the opinion of the Court of Appeals, whose conclusions we approve. The meander line run by surveyor Rice along the northern borders of the tracts patented to Margaret Bailey may not have been strictly a line of boundary, *Railroad Co. vs. Schurmeier*, 7 Wall., 272; *Hardin vs. Jordan*, 140 U. S., 371, 380; *Horne vs. Smith* 159 U. S., 40; but it indicated that there was something which *had stopped the survey*, which limited the area of the land which the United States was proposing to convey, and left to subsequent measurements the actual determination of the line of separation between the land conveyed and that which the government did not propose to convey. Generally, these meander lines are lines which course the banks of navigable streams or other navigable waters. Here, it appears distinctly from the field-notes and the plat, that the surveyor, Rice, stopped his surveys at this "marsh," as he called it. These surveys were approved and a plat prepared which was based upon the surveys and field-notes, and *showed the limits of the tracts which were for sale*. The patents, referring in terms to the survey and plat, clearly disclose that the government was *not intending to and did not convey* any land which was a part of the marsh. * * *

"It may be that the surveyor, Rice, erred in not extending his surveys into this marsh, but *this error does not enlarge the title conveyed* by the patents to the surveyed fractional sections. The United States sold only the fractional sections, received only pay therefor, an amount fixed by the number of acres conveyed, and *one receiving a patent will not ordinarily be heard to insist that by reason of an error on the part of the surveyor more land was bought than was paid for, or than the government was offering for sale.*

"It may be true that under his contract, the requirements of the statute and the regulations of the land department, Rice should have extended his surveys to the shore of Lake Erie, but he did not do it; he stopped at the borders of this marsh, and the land department in effect approved his action. And it may be remarked in passing that the letter of the statute would not limit the survey to the shore of the lake, for section 2395 of

the Revised Statutes declares that surveys shall be made by running lines *at right angles,* 'so as to form townships of six miles square, unless where the line of an Indian reservation or of tracts of land heretofore surveyed or patented, or the course of navigable rivers, may render this impracticable; and in that case this rule must be departed from no further than such particular circumstances require.'

"But Lake Erie is not an Indian reservation, nor a tract of land heretofore surveyed and patented, nor a navigable river. It is true, section 2396, which provides how the boundaries and contents of the several sections, half sections and quarter sections of the public lands of the United States shall be ascertained, says, after stating the rule where all the corners are established, that 'in those portions of the fractional townships where no such opposite corresponding corners have been or can be fixed, the boundary line shall be ascertained by running from the established corners due north and south or east and west lines, as the case may be, to the water course, Indian boundary lines, or other external boundary of such fractional township.'

"If this recognizes any other external boundary than that which is indicated in section 2395, it does not prescribe what that external boundary shall be, and if the land department treats either a marsh or a lake as such external boundary, who can declare that its action is void? * * *

"Of course, *if the fractional sections patented to Margaret Bailey did not border on some body of water, there were no riparian rights,* and if the conclusion of the trial court that this marsh was land (for swamp and boggy land is to be treated as land) was correct, then whatever changes may have come to the marsh—whether it became more or less subject to overflow—would not alter the fact that the rights of Margaret Bailey, the patentee, were *limited to the very lands which were conveyed to her,* and for which she paid, *and did not extend over the meander line* into the territory north. But it is urged that the fact that a meander line was run amounts to a determination by the land department that the surveyed fractional sections bounded upon a body of water, navigable or non-navigable, and that, therefore, the purchaser of these fractional sections was entitled to riparian rights; and this in face of the express declaration of the field-notes and plat, that that which was lying beyond the surveyed section was 'flag marsh' or 'impassable marsh and water.' *But there is no such magic in a meandered line;* all that can be said of it is that it is an irregular line *which bounds a body of land,* and beyond that boundary there may be found forest or prairie, land or water, government or Indian reservation."

By that decision it is distinctly announced, (1) that the boundaries indicated upon a plat which is based upon surveys and field-notes, *show the limits of the tracts to be sold;* (2) that patents, referring to survey and plat clearly disclose that the Government does not intend to convey any land which lies beyond the limits so shown; (3) that the failure of the surveyor to extend his survey beyond the meander line does not enlarge the title conveyed by patents for the fractional lots; (4) that one receiving a patent will not ordinarily be heard to insist that, by reason of an error on the part of the surveyor; more land was bought than was paid for, or than the Government was offering for sale; (5) that the statutes governing the survey of public lands prescribe the mode of ascertaining the boundaries and contents of those portions which have been surveyed; (6) that no one can declare void an external boundary adopted by the land department; (7) that the rights of a patentee are limited to the precise lands which are conveyed by the patent; (8) that, if they are shown to extend to a meander-line which was not laid down along a stream or body of water, they do not extend beyond the meander boundary; (9) that there is no magic in a meandered line, and that all that can be said of it is that it is an irregular line which *bounds a body of land,* and beyond that boundary there may be found forest or prairie, land or water, government or Indian reservation.

The principles thus declared are conclusive of the cases now before the court, and require the affirmance of the judgments of the Supreme Court of Minnesota.

The *Niles* case was not, however, the first in which this court had considered and determined many of the propositions embraced within its decision. The same questions had been presented in *Horne vs. Smith,* the facts in which have already been stated in this brief at pages 36-7. The facts in that case differed from the situation developed in the present suits only in the immaterial circumstances that an *erroneous* (not a *fictitious*) survey had been made, and, in the course of it, a meander line purporting to run along the Indian river had been, in fact, run along a bayou lying to the east of the river. This court held that there had been "simply an omission to make any survey of the tract west of the bayou and between it and the main body of the Indian river."

The opinion then continued:

"It is unnecessary to speculate why it was that it was not surveyed. It may have been a mere oversight, or it may have been because the surveyor thought that the action of the water would soon wash the low land away; but whatever the reason, the fact is obvious that no survey was made of that body of land, and the boundary line fixed was the water line of the bayou. * * * Now, if this tract west of the bayou and between it and the Indian river, was intended to be surveyed, obviously all the lines of sections 23 and 26 would have been run along straight lines, and so as to make complete sections and quarter sections; but such lines, at least those on the west side, were not run, and, whatever the reason, the survey stopped at the water line of the bayou and left this body of land west thereof wholly unsurveyed. Although it was unsurveyed, it does not follow that a patent for the surveyed tract adjoining carries with it the land, which perhaps ought to have been, but which was not in fact, surveyed. And when it is clear from the plat and the survey that the tract surveyed terminated at a particular body of water, the patent carries no land beyond it. Cases of this nature are naturally few in number."

The cases of *Lammers vs. Nissen*, 4 Neb. 245, Glenn vs. Jeffrey, 75 Ia., 20, and *Whitney vs. Detroit Lumber Co.*, 78 Wis., 240, are then cited by the court as supporting the same doctrine.

It will thus be seen that the ruling principles applied in the *Niles case* had been previously recognized and applied by this court. The result that would follow the *error* of the surveyor would equally follow his *deliberate fraud*. (*Kirwan vs. Murphy, supra.*)

Plaintiff in error insists that, under the decision in *Horne vs. Smith*, if the body of water named be not the boundary, some other must be, for the fractional lots are at all events, entitled to *a water boundary*.

This brings the argument for the plaintiff in error down to this: If the plat indicate that a tract of land abuts upon a certain body of water, it shows to a demonstration that the grant of that land carries title to the body of water specified, *or to some other body of water not indicated upon the plat*.

If this be true, the whole contention of the plaintiff in error is abandoned, and the foundation of its case instantly crumbles; *the patent and plat cease to be controlling*, and the extent of the grant rests upon extrinsic facts concerning which the granting instruments are silent.

1162

As to such facts the plat can never be a guide, and the indicated boundary may, or may not, be the actual boundary. The force imputed by the plaintiff in error to a call for a natural monument is thus conceded to have no reality.

This court, however, has given a definitive answer to the contention of the plaintiff in error respecting a water boundary:

> "But it is urged that the fact that a meander line was run amounts to a determination by the Land Department that the surveyed fractional sections *bordered upon a body of water*, navigable or non-navigable, and that, therefore, the purchaser of these fractional sections was entitled to riparian rights. * * * There is no such magic in a meandered line. All that can be said of it is that it is an irregular line which bounds a body of land, and beyond that boundary there may be found *forest or prairie, land* or water, government or Indian reservation." (*Niles vs. Cedar Point Club*, 179 U. S., 308.)

In *Lammers vs. Nissen*, cited *supra*, it appeared that, between the meander line as run and the Missouri river, there was a tract of several hundred acres, and the court held that, although, as to public lands of the United States, a meander line is generally conceded to follow the windings of a stream, yet the question whether it does so or not may be determined by evidence *aliunde;* the mere fact that it is run and designated upon the plats as a meander line *is not conclusive.*

The court also held that, as the body of land referred to had not been surveyed, it did not pass under a patent of a fractional lot which, upon the government plat, extended to the meander line.

This case was followed in the Supreme Court of Nebraska by *Bissell vs. Fletcher*, 19 Neb., 745, which was an action in ejectment to recover land in possession of defendant, which plaintiff claimed was part of a fractional lot to which he held the patent title. An appeal was taken from a judgment entered for the defendant. The facts and the rule of law applied thereto cannot be better stated than in the words of *Justice Maxwell*, who delivered the opinion of the court:

> "There is no dispute about the essential facts in the case, and they are as follows: The plaintiff is the owner of lot 3, in section 31, township 2 N., range 18 W., and is entitled to, and is in possession of the same, except as hereinafter stated. This

lot, as shown by the plat and patent introduced in evidence, contains 52.60 acres. The plat shows that the southwest corner of the lot extends to the north channel of the Republican river, and there is some testimony tending to show a meander line between the river and the south line of said tract. The defendant is the owner of lots 6 and 7 in said section, and was the owner thereof at the commencement of this action. These lots lie south of lot 3, and in fact, between it and the river as it flows at present. The contention of the plaintiff is that lot 3 extends to the river; and, notwithstanding the fact that lot 3 contains all the land the plaintiff purchased and paid for, and the effect of the extension of the line would be to give him about 117 acres of land, to which he seems to have no equitable right, still he contends the law to declare the land to be his. *It is also shown that lots 4 and 5 in said section, if the plaintiff is entitled to recover, would also be extended to the river, and absorb a considerable portion of the tract that the plaintiff claims.*

"There is a paucity of testimony as to the character of the channel of the river, along which the meander lines are run. Whether in fact the river flowed there at the time the original surveys were made, in 1865 and 1869, is not proved. The testimony tends to show that the river at the present time flows about three-quarters of a mile south of lot 3. As to when this change of the channel took place there is no proof. It is not claimed, however, nor is there any proof, that lots 6 and 7 are an accretion to lot 3. The case, therefore, is similar in most respects to that of *Lammers vs. Nissen*, 4 Neb., 245, which was affirmed by the supreme court of the United States (25 Co-op. ed., 562)."

A still later case, *Harrison vs. Stipes*, 34 Neb., 431, presented a similar controversy, where the plaintiff established a complete chain of title, from the United States to himself, to fractional section 8, purporting to embrace 40 acres of land, and as to which the defendant filed a disclaimer. The opinion recites:

"It appears that said fractional section 8 was surveyed by the United States in 1856. The east and south boundaries of the section consisted of a meander line near the west bank of the Missouri river. * * * It further appears from the testmony of plaintiff's witnesses—and we fail to find any evidence in the bill of exceptions to the contrary—that *the original survey did not extend to the river*, and that the strip lying east of the meander line was covered with a growth of willows and cottonwoods at the time of the survey. While the testimony

shows that this land was occasionally subject to overflow, yet it also appears that it lay above the usual stage of water in the river. Since said survey, and after the patent was issued for the forty acres, the channel of the river has changed further east a considerable distance. The plaintiff's claim to any portion of the strip lying between the meander line and the present channel of the river is not well founded for the reason that *it is not an accretion* to the plaintiff's land. The case falls within the rule announced in *Lammers vs. Nissen*, 4 Neb., 245, where it is held that 'an entry of government land, bounded by a meander line, does not include land lying at the time between such meander line and the bank of the river.' "

Glenn vs. Jeffrey, 75 Ia., 20, also cited by *Mr. Justice Brewer* in *Horne vs. Smith*, was a case where the plaintiff had become the owner of the patent title of fractional lot 3, bounded by a meander line which the government plat and field notes described as the line of the Missouri river. This line, in fact (as in the Horne case), marked the edge of a bayou some distance from the river, and between which and the river lay certain lands not otherwise surveyed, and which were occupied by the defendant. *Chief Justice Seever* delivered the opinion of the court, saying:

"There was no controversy as to the facts. It is true that the government plats and field notes described the meander line as being at the Missouri river, and therefore it is claimed that lot 3 extended to the river. In fact, however, instead of running the meander line along the river, it was run along a bayou some distance from the river. The land in question cannot be regarded as accretion, but existed as it now does when the survey was made. The court rightly directed the jury to find for the defendant. *The land never was in fact surveyed* by the government, and never sold or conveyed to the plaintiff. It is true, the meander line is not a boundary line (Kraut vs. Crawford, 18 Ia., 549), and if the evidence in this case showed the river had been meandered, this case would be like the case cited; but there is a material distinction between them. In the case cited the river had been meandered, and the land in controversy had been formed by accretion, *since the survey and sale of the land by the government.*"

The controlling fact in *Glenn vs. Jeffrey* was that the survey stopped at a certain point, not that there existed a bayou at that

point. The existence of the bayou explained, perhaps, why the survey stopped where it did, but, as in the *Horne case,* that fact had no greater significance, it appearing that no survey of the land had been made beyond the meander line.

The doctrine of *Glenn vs. Jeffrey* was sustained by the same court in *Grant vs. Hemphill,* 92 Ia., 218, very closely resembling in its facts the cases at bar. The land in controversy was the Eastern part of what was claimed to be section 19. According to the government maps and plats, all of the section, except the W½ of the NW¼ and another tract of 221 acres, was designated as under water. The 221 acres were subdivided into five lots numbered 1 to 5 inclusive. All of the surveyed land was situated in the westerly part of the section, extending from a point on the north line, a little more than half across the section, to a point on the south section line 80 rods east of the southwest corner; the easterly line of the survey appeared to be a meander line of Mud, or Lost Island, lake. The plaintiff was the owner of the five lots by a proper chain of conveyances from the government. It was admitted by plaintiff that the specified quantity of land (221 acres) was contained in the five lots without including any part of the land designated on the government plat as under water. "In other words," says the opinion of the Supreme Court, "so far as appears, he has the full complement "of land which he purchased within the meander line."

After purchasing the lots, plaintiff claimed the whole of the section east of the meander line, by reason of his ownership of the fractional lots. The land contended for probably had never been any part of a lake, and there was no evidence in the case that, at or near the time of the survey, or since, there had been any body of water anywhere on the land upon which to base a meander line, except the inlet to Mud Lake which ran across the southeast corner of the lands, and in which the water of the lake backed up in times of floods. The defendants in the case had taken possession of the land for the purpose of entering it for homesteads. The plaintiff's action, to quiet title, was based upon those entries by the defendants. As to the basis of plaintiff's claim, *Judge Rothrock,* who delivered the opinion, said:

> "It is a claim of ownership because he is the owner of the adjoining land. If his ownership on this ground is well founded he is entitled to a decree quieting his title; if he has

1162

no title to the land, he has no more right to the possession than the defendants. In other words, if the land in dispute is not owned by the plaintiff, and is not surveyed, and cannot be sold or disposed of until it is surveyed, it is part of the public domain, to which no one can acquire either ownership or right of possession.

"We come now to the material question in the case. A section of land is supposed to contain 640 acres. If section 19 had been all surveyed, it would have embraced a less number of acres, being what is known as fractional. As we have said, the five lots owned by the plaintiff contain 221.36 acres, and the W. ½ of the N. W. ¼ is marked on the plat of the government survey as containing 58.93 acres. If the section were not fractional, the plaintiff's claim would be a demand for a decree quieting title in him to more than 360 acres of land based on the ground that he is the owner of 222 acres of land adjoining, of which he is a riparian proprietor, and he makes this demand in a court of equity. *A riparian proprietor is one who owns land bounded upon a water course or lake.* The evidence in this case shows that there was not at the time of the government survey, and is not now, any body of water east of the meandered line, on which to found any valid claim of land outside of the line, by accretion or reliction, or in any other manner. In the large mass of authority collected and cited by counsel, we find no case which can be said to sustain a claim made upon any such state of facts. It is well understood that a meandered line is not a line of boundary. It is supposed to be along the shore of a body of water, and to follow the windings of the stream or lake, and the sinuosities of the banks. In such case, and where it appears that the government intended to sell all the land to the river or body of water, the riparian owner is entitled to all the land adjacent to his grant, to the water's edge. *Kraut vs. Crawford,* 18 Ia., 549. *But no such condition is found under the evidence in the case at bar. There is not, and has not been, any body of water upon which to locate a meandered line."*

The court then quoted the rule in the *Schurmeier* case to the effect that a meandered line is not a boundary, and continued:

"We have cited this well settled principle, not for the purpose of approving and following it,—for it is known and understood everywhere to be the correct doctrine,—but *to show that the meandered line and the banks of a stream or shore of a lake cannot be held to apply where there is no body of water to which it can be referred.* * * *

"We hold that all of the land in dispute is part of the unsurveyed domain of the United States, to which no one can obtain title, except through the regular government methods adopted by the general government for the disposition of the public lands. The decree of the district court is affirmed."

The authority of this decision is assailed by plaintiff in error upon the assertion that it has been overruled by the later case of *Schlosser vs. Cruickshank,* 96 Ia., 414, an action presenting a question of *riparian rights* where the meander line was actually run about a lake existing where it was located upon the plat. So far from overruling *Grant vs. Hemphill,* that decision was carefully distinguished, and practically reaffirmed, in this language:

"In *Grant vs. Hemphill,* a meandered line had been run, but there was no adjacent body of water upon which to base such a line, nor had there ever been such a body of water. In speaking of a meandered line in *Grant vs. Hemphill,* this court said:

" 'In such cases, and where it appears that the government intended to sell all the land to the river or body of water, the riparian owner is entitled to all the land adjacent to his grant, to the water's edge.'

"In these cases there was a body of water to meander. There was a meander line run, which appears on the plat of the government survey as coincident with the line of the lake."

But any weight that might otherwise be given to this case of *Schlosser vs. Cruickshank* was destroyed by the announcement of the Iowa Supreme Court in the recent decision of *Schlosser vs. Hemphill,* 90 N. W. Rep., 842 (not yet officially reported), to the effect that the conclusion in the *Cruickshank case* was erroneous owing to the confusion of its facts with those of another case in connection with which it was submitted for decision, the arguments having been made solely in the latter case.

This late case of *Schlosser vs. Hemphill* arose out of conditions differing from those in the present suits only in the circumstance that it did not appear that the survey was fictitious and fraudulent. In deciding the case against the plaintiff, the Iowa Supreme Court thus clearly states the rule:

"When a body of water is meandered, such lines are not run as boundaries, but merely for the purpose of defining the sinuosities of the shore, and as a means of ascertaining the quantity

of land to be paid for by the purchaser. *Schlosser vs. Cruickshank, supra,* and authorities therein cited. In such a case, if the meander line does not coincide with the bank of the lake, but is so run that land lies outside, and between it and the shore, the adjoining owner will usually take title to the actual shore line; and it may doubtless be properly conceded that no subsequent resurvey by the government, *in the absence of fraud, or error so gross as to be in the nature of a fraud, in the original survey,* could affect his title thereto. *Mitchell vs. Smale,* 140 U. S., 406. **But, where there is no adjacent body of water proper to be meandered, the rule we have mentioned will not apply. In such a case the meander line will be a boundary line, and one who purchases from the government according thereto cannot claim title beyond it.** *Grant vs. Hemphill,* 92 Ia., 218; *Livestock Co. vs. Springer,* 22 Sup. Ct., 563."

The quoted statement seems to summarize accurately the law as it is now recognized to exist.

We have frequently referred to the case of *French-Glenn Livestock Co. vs. Springer,* cited in the foregoing opinion of the Supreme Court of Iowa (see pages 13, 15-16, 22, 43), *the facts in which were practically identical with those in these suits and presented the precise questions to be here determined,* and which the Supreme Court of Minnesota (record, p. 86) declared to be conclusive of the cases now here for review.

In that decision this court held: (1) that *the land lying beyond the meander line established by the surveyor was not included within the survey;* (2) that it was not, therefore, embraced in the description of the lots conveyed by the patents or in the deeds under which the plaintiff in error claimed; (3) that the situation upon the ground, and the location of the meander line so as to include or exclude the land in question, were facts to be decided by the jury (or by the trial judge, in the absence of a jury), and, when found, *conclusively determined the controversy;* (4) that, while the descriptions of the lots contained in the survey, plats and patents may be *conclusive against the government,* and its grantees, *so far as the lands actually described and granted* are concerned, yet *such descriptions cannot be held to extend to lands not included within the lines of the survey;* (5) that, if the lake did not exist as *an actual and visible boundary on* the line of the lots as shown upon the plat, the lots cannot be extended, either directly or laterally, to adapt them to

the neighboring lake, and that the rights of the patentees and their successors in title must be regarded as existing *within the actual lines and distances laid down in the survey,* to the extent of the acreage called for in the patents; (6) that, in such cases, *the meander line is intended to be the boundary line of the fractional lots.*

The essential facts in the cases at bar correspond almost precisely with those in the *Springer case.* The present cases are the stronger in the circumstance that their meander line was arbitrarily and fraudulently laid down by the deputy surveyor instead of being misrepresented, as was probably true in the *Springer case,* by the *mistake* of the surveyor.

A short time prior to its decision of the *Springer case,* the Supreme Court of Oregon had before it for decision a similar suit in which the same questions of law were presented, which it decided in the same way. We refer to the case of *Barnhart vs. Ehrhart,* 33 Ore., 274, where the law was thus stated:

> "When *for any reason* the surveyor omits to include large tracts of land lying between the meander line as surveyed, *or as pretended to have been run upon the ground,* and such streams or bodies of water, the patents for the lots, though referring to the official plat of such survey for identification, are not equivalent to a conveyance of the premises to such navigable stream, lake or bay, but *are grants limited by such meander line.*"

The Supreme Court of Illinois, in *Fuller vs. Shedd,* 161 Ill., 462 (recently affirmed in this court *sub nom. Hardin vs. Shedd,* 190 U. S., 508), hold to the same rule:

> "There are cases where the meander line would be of itself the boundary, as where the line run by the government surveyors, by mistake or fraud, in surveying the public lands, leaves between such line and the stream or lake a considerable body of land on which is vegetation, etc., above the ordinary state of water. In such case the surveyed land is all that is granted by the United States and the patentee is not a riparian proprietor, *his boundary being fixed by the meander line.*"

Finally, this principle was recognized and applied by *Mr. Justice Miller* in his charge to the jury, in the case of *Granger vs. Swart,* 10 Fed. Cas., 961.

11629

RECAPITULATION.

The plaintiff in error, being the conceded owner of fractional lots 3, 5, 6 and 7, in section 4 of township 57, range 17 west, Minnesota, said lots being bounded on the government plat (referred to in the patents conveying them) by what purported to be the meander line of Cedar Island lake, brings ejectment against the defendants in error, occupying lands between the lake and the meander line as shown upon the plat, to obtain possession of such lands as a part of said fractional lots, and contends that the plat and patents *conclusively establish the lake as the interior boundary of the lots.*

The defendants in error assert that, under the facts in these cases, plaintiff in error is restricted to the ownership and possession of those lands which lie within the boundary lines shown upon the plat; and they are abundantly supported in their position by the principles of law announced by this court and by other tribunals.

There is no dispute over the facts, and there is little room for controversy as to the law applicable thereto.

1. Undisputed facts: The reported survey was fraudulent, the meander line was never run, and the field-notes upon which the plat was based were fictitious.

The established law: The fraudulent action of the deputy surveyor did not estop the government, or extend the limits of the grants under the patents. (Point II of this brief, pp. 11-14; *Kirwan vs. Murphy*, 189 U. S., 35; *French-Glenn Livestock Co. vs. Springer*, 185 U. S., 47, 51; *Niles vs. Cedar Point Club*, 175 U. S., 300, 306).

The patents and plats are not conclusive that the fractional lots abut upon Cedar Island lake, or upon any water boundary; they are conclusive only as to the lands included within the lines of the survey shown upon the plat. (Point III of this brief, subdiv. 5, pp. 19-35; subdiv. 6, p. 43; subdiv. 7, pp. 46, 47-8, 56-7; *Niles vs. Cedar Point Club*, 175 U. S., 300, 306, 308; *French-Glenn Livestock Co. vs. Springer, ubi supra*).

2. Undisputed fact: The land in controversy has never been surveyed.

The established law: Patents convey only land that has been surveyed, and unsurveyed lands belong to the public domain and are subject to the control of the Land Department. (Point III of this brief, subdiv. 4, pp. 18-19; *Kirwan vs. Murphy, supra*; *Niles vs. Cedar Point Club, supra*; *Horne vs. Smith*, 159 U. S., 40).

3. Undisputed facts: No lake existed where the meander line was laid down upon the plat; Cedar Island lake has never approached the meander line within a distance varying from one-half of a mile to a mile; the intervening land now is, and always has been, high, rolling land of good agricultural quality, heavily timbered with trees of more than a century's growth, extending to the water's edge.

The established law: Whether Cedar Island lake was the actual boundary of the fractional lots of plaintiff in error was a *question of fact* for the trial court to decide, which was in nowise concluded by the call for a meander line. (Point II of this brief, pp. 14-15; *French-Glenn Livestock Co. vs. Springer, supra*; *Niles vs. Cedar Point Club, supra*).

Under such facts, the call for the lake as a natural monument is a false call which it would be absurd to retain, and the rule respecting the supremacy of natural monuments is *ipso facto* rendered inapplicable. (Point III of this brief, subdiv. 5, pp. 22-27; *White vs. Luning*, 93 U. S., 514).

Such facts relegate the inquiry for boundaries to the survey returned, and to the statutory method of determining therefrom the limitations of the grants. (Point III of this brief, subdiv. 5, par. *Second*, pp. 27-32).

Under such facts, the rule in the *Schurmeier* case has no application, nor are the decisions in *Hardin vs. Jordan* and *Mitchell vs. Smale* applicable or controlling. (Point III of this brief, subdiv. 5, pp. 32-34).

By every rule of construction the clear *intent* of the parties, as derived from the granting instruments, is disclosed to convey only the lands of which plaintiff in error is concededly in possession. (Point III of this brief, subdiv. 6, pp. 35-45).

11630

Such facts, also, conclusively establish that the fractional lots do not extend to the lake. (Point III of this brief, subdiv. 6; *French-Glenn Livestock Co. vs. Springer*, 185 U. S., 47, 54).

On the other hand, *the meander line is conclusively fixed as the boundary of the fractional lots,* and plaintiff in error is restricted to the lines and distances laid down in the purported survey according to which the lots were granted. (Point III of this brief, subdiv. 7, p. 45; *Bates vs. Illinois Central R. R. Co.*, 66 U. S., 204; *Horne vs. Smith, supra*; *Niles vs. Cedar Point Club, supra*; *French-Glenn Livestock Co. vs. Springer, supra,* p. 52).

As the plaintiff in error must recover upon the strength of its own title, and is confessedly in possession of all the lands described in and conveyed by the patents under which it claims, the judgments of the Supreme Court of Minnesota must be affirmed.

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Counsel for defendants in error.

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SUPREME COURT OF THE UNITED STATES

October Term, 1903.

Nos. 127, 128.

SECURITY LAND & EXPLORATION COMPANY,
Plaintiff in Error.

vs.

G. A. BURNS and MARY L. BURNS, his wife,
Defendants in Error.

SECURITY LAND & EXPLORATION COMPANY,
Plaintiff in Error.

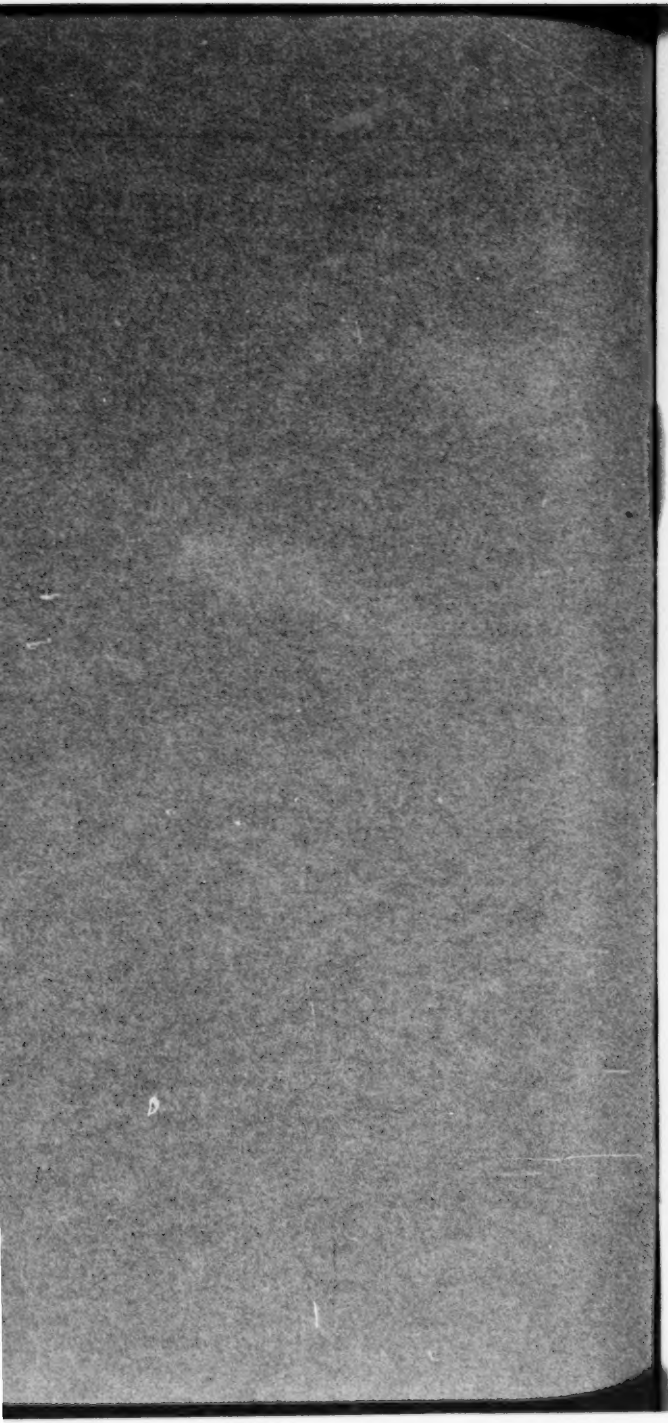
vs.

HENRY WECKEY and ROSALINE S. WECKEY, his wife,
Defendants in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

SUPPLEMENTAL BRIEF FOR DEFENDANTS IN ERROR.

GEORGE P. WILSON,
JOHN R. VAN DERLIP,
R. R. BRIGGS,
Counsel for defendants in error.



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TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

MENTAL BRIEF FOR DEFENDANTS IN ERROR.

inting the argument for defendants in error in these ave received the brief for the plaintiff in error, which ust, because of its copious citation of cases, as well as of ive presentation of the theory upon which this court is everse the judgments under review, sufficiently excuse comment thereon by us.

ct of much of the brief there may be applied, not inap-, to its author, the words of the poet addressed to the

"Thou say'st an undisputed thing in such a olemn way."

This is true particularly of the principles enunciated in the copious citations from decided cases in points First and Second (pp. 19-57).

The plaintiff in error has here reduced its contention to its lowest terms, and submits the suits upon the simple proposition (p. 13) that "the case is governed by the elementary rule that monuments prevail over courses, distances and quantities." (See our former brief, p. 7).

For the first time, all parties to these suits are now agreed upon the following propositions:

1. That the government system of surveys aims to lay out public lands in *symmetrical forms* (Plaintiff's brief, p. 41).

2. That the plat is a mere picture or daguerreotype of the survey (pp. 15, 41, 84).

3. *That a monument impossible of application is no monument at all* (p. 45, par. 7).

4. That there are cases which lie entirely beyond the pale of the rule giving monuments supremacy over all other calls of the survey (p. 63).

5. That corners and boundaries actually marked upon the ground by a surveyor are controlling (p. 71).

We may even assent to counsel's proposition that, if monuments intentionally adopted are attacked for error *only because they are more distant* from each other than returned by the surveyor, and so enclose a larger area than intended, the error, *for the purposes of construction,* will be imputed to the distances and not to the monuments (p. 45, par. 7).

Conceding these points, it would seem as if plaintiff in error conceded that the judgments of the Supreme Court of Minnesota must be affirmed; nevertheless, the contrary is still urged.

I.

Under Point First, it is insisted by plaintiff in error that the rule that monuments prevail over the courses, distances and quantity given in the field-notes of a survey is *universal*.

We concede this to the extent that the declarations quoted in the brief go and were intended to go. All that they signify, or were intended to signify, is that the rule embodies a principle of law which is everywhere accepted. **They do not mean, and were not intended to mean, that it offers the sole means of solution of every controversy that may arise respecting boundaries.** The fundamental error in the contention of the plaintiff lies in the failure to observe the distinction between **universal acceptation** and **universal application.**

It is undeniably true (notwithstanding counsel's assertion to the contrary, p. 39) that courses and distances, and the monuments at which they are reported to terminate, are presumed to agree. When they do agree there is no occasion for construction of the terms of the grant. It is only when they are conflicting that construction must be resorted to, and it may be conceded that, in such instances, the first rule of construction to be invoked, *if the facts in the particular case will admit of its application*, is the rule relied upon by plaintiff in error. Yet, when the facts are such that this rule is inappropriate, recourse must be had to another rule. If this were not true, there would be no occasion for the existence or recognition of any other canon of construction than the one under discussion. If that be *universal* and *absolute*, as is urged, no conflicting canon would ever have been formulated. The decisions cited by counsel arose under the distinguishing conditions referred to by him (p. 40), where the country was thickly settled and the title to every tract was of ancient origin and demarked by well-known streets or roads or immemorial adjoinders. The spirit of those decisions did not contemplate their application to the conditions presented by careless *or fraudulent* surveys in wilderness regions of trackless forests in the west, and their language can not be held to support conclusions neither intended nor imagined by the jurists who employed it.

Still, that language states a rule of construction as accurate today in Minnesota, and in every other jurisdiction, as when it was uttered.

Does counsel mean to say that courses and distances are *never* resorted to for the purpose of ascertaining the intent of the parties to a grant, or to limit its scope? Was this court guilty of gross oversight of a principle so long recognized and so universally established, as counsel's citations demonstrate, when, in the case of *French-Glenn Livestock Co. vs. Springer*, 185 U. S., 47—substantially identical with the cases at bar—it rejected the natural monument (actually to be found in the vicinity) and said:

> "If there never was such a lake—no water forming an *actual* and *visible* boundary—*on* the north end of the lots, it would seem unreasonable either to prolong the side lines of the survey indefinitely until the lake should be found, *or to change the situs of the lots laterally in order to adapt it to a neighboring lake.* The jury having found that the facts under this issue were as claimed by defendant in error, the conclusion must be that the rights of the plaintiff in error must be regarded *as existing within the actual lines and distances laid down in the survey,* and to the extent of the acreage called for in the patents, and that the meander line was intended to be the boundary line."

Did it not, rather, strictly and accurately declare the true principle when it announced in *White vs. Luning*, 93 U. S., 514:

> "It is true that, as a general rule, monuments, natural or artificial, referred to in a deed, control on its construction rather than courses and distances; *but this rule is not inflexible, it yields* whenever, taking all the particulars of the deed together, it would be absurd to apply it."

And was it not right when, in the case of *Niles vs. Cedar Point Club*, 175 U. S., 300, it held that there is no magic in a meander line, and that "all that can be said of it is that it is an irregular "line which bounds a body of land, and beyond that boundary there "may be forest or prairie, land or water, government or Indian "reservation"?

THE DECISION OF THIS COURT IN KIRWAN VS. MURPHY IS CONCLUSIVE HERE.

The doctrine contended for by plaintiff in error is precisely that upheld by the lower courts in *Kirwan vs. Murphy* (83 Fed. Rep., 275; 103 Fed. Rep., 104; 1109 Fed. Rep., 354), namely, that the reference to Cedar Island lake in the survey and upon the plat constituted it a natural monument to which the survey must be deemed conclusively to have extended, and which thereby became the actual boundary of the fractional lots. Upon appeal, this court (189 U. S., 35) declined to apply the rule, and held that the fractional lots did not, as a matter of law, extend to the natural monument called for.

That case was brought by Murphy and others, owners of substantially all the fractional lots surrounding Cedar Island lake except those involved in these suits, to restrain a survey by the government of the land lying between the Howe meander line and the lake, pursuant to a contract made by Kirwan, as U. S. Surveyor General for the District of Minnesota, with his co-defendant, Crosswell, a deputy surveyor.

The complainants were the owners of the fractional lots by mesne conveyances from the patentees, and alleged that they had bought the lands for value, without knowledge of the inaccuracy or fraud of the survey, and were induced thereto particularly by the fact that the lots bordered upon the lake, thus affording facilities for floating their logs to market. The defendants answered, setting up the fictitious nature of the survey, and the facts which appear in the findings in the cases at bar were substantially disclosed and found in the *Kirwan case*.

The Circuit Court decreed that **the complainant's lots extended to, and were bounded by and upon, the actual waters of Cedar Island lake** (189 U. S., 42, 52); that the defendants had no authority to meddle with said lands for the purpose of making a survey of the same, and that a perpetual injunction be issued restraining such survey.

The whole case for complainants (appellees' brief, 189 U. S., 43-5) rested upon the same proposition urged by plaintiff in error here and concisely expressed at the top of page 13 of its brief:

"The case is governed by the elementary rule that monuments prevail over courses, distances and quantities."

The accuracy of that contention was sustained by the Circuit Court of Appeals (83 Fed. Rep., 275; 109 Fed. Rep., 354).

Upon the second appeal, the opinion filed upon the first was adopted and adhered to by the Court of Appeals.

The proposition which controlled the decisions below was distinctly negatived by this court when, upon the postulates that **no survey was in fact made; that no meander line was ever run; that no body of water in fact existed near the false meander line indicated** (189 U. S. 52-3), **and, that the fraudulent action of the deputy surveyor did not divest the Land Department of its power to survey the lands in controversy** (p. 54), it reversed the decrees appealed from and ordered the dismissal of the bill.

The bill having been dismissed upon the grounds stated, the question of title was determined against Murphy and the other complainants; for, if title passed under their patents, the functions of the Land Department in the premises were, necessarily, divested; and the title does so pass, in every instance, where a conveyance, generally called a patent, has been executed and delivered. *Moore vs. Robbins*, 96 U. S., 530, *et id omne genus.* (See Mr. Stanford's brief in *Kirwan* case, pp. 11-12, 126.)

It was also declared that the duty of surveying the public domain is one of the functions of the Land Department, and that the courts had no jurisdiction to restrain the proposed survey by the Department of the lands in controversy. **If, then, the Land Department has now the power to survey the lands surrounding Cedar Island lake, including the lands claimed by the plaintiff in error, it is because the title thereto did not pass under the patents by virtue of which Murphy and his associates claimed, nor under the patents through which plaintiff in error is now claiming. If it did not so pass, then the natural monument, Cedar Island lake, was not paramount in defining their boundaries,** and the rule of *White vs. Luning, supra*, that a false call for a monument will be rejected, is still the rule of this court and will be followed.

It is to be noted, in the cases cited by counsel under Point First, that the decisions by which the extent of their respective grants was arrived at, did not turn upon *extrinsic* facts which of them-

selves were determinative of the controversy, as is the situation in the cases at bar. (*Kirwan vs. Murphy, supra; French-Glenn Livestock Co. vs. Springer,* 185 U. S., 51). Had it appeared in the numerous cases cited in plaintiff's brief that the monument called for in the descriptions was *a fiction,* that it was non-existent, and that its designation was made fraudulently, the courts would have discarded the rule applied by them, with the same unanimity with which they invoked it, for fraud is as active a vitiating element in surveys as in contracts or in any other transactions in which its maleficent presence is disclosed.

II.

Having assumed the position that monuments control, ***absolutely*** and *always,* all other elements of a description, whether right or wrong, plaintiff in error declares, in *Point Second* of its brief, that the reason for this doctrine is that a description of land by reference to monuments imports that the only thing intended to be dealt with is a defined tract segregated by visible marks from the surrounding land. The conclusions are thence deduced that all other elements of the description are simply finger posts to point to the monuments, and that they serve no other purpose; that if they point in the wrong direction or to the wrong place, they become *functus officio* equally as much as if they guided truly; that the call for monuments is so absolute as to overrule even the intention of the parties, and to compel the passing of title to unsurveyed public lands.

We cannot agree to this.

Where the courses and distances, monuments and quantity recited in a grant harmonize, the courses and distances naturally lead to and identify the monuments, and no conflict is presented. Where, on the other hand, the various elements of the description do not concur, so that one or another must be rejected, then, in the absence of extrinsic and controlling facts, *rules of construction* must be resorted to in order to arrive at the purpose of the parties.

> "In the construction or interpretation of written instruments, the intention of the parties as therein expressed is the great object of search. If, while standing in the shoes of the parties

> when the deed was executed and reading it in the light of the then existing facts and circumstances, such as the nature, condition, occupation, etc., etc., of the thing granted, the intention it not apparent, then resort may be had to the rules of construction. Many of these rules are intended to aid in ascertaining the intention of the parties, by pointing out and giving effect to those things about which the law presumes the parties are least liable to make mistakes. *Treat vs. Strickland,* 23 Me. 234, 240. Some are arbitrarily resorted to, 'for want of a better reason, and to be invoked, therefore, if at all, only when all other means fail. If, however, the intention is apparent, it must govern. *Abbott vs. Abbott,* 51 Me. 575, 581."

The foregoing language, taken from the opinion of the Supreme Court of Maine in *Erskine vs. Moulton,* 66 Me., 276, 279, states another "universal" doctrine.

The principle contended for by plaintiff in error is merely one of these rules of construction (*Cox vs. Couch,* quoted at page 47 of the brief for plaintiff in error, *Hale vs. Cottle,* quoted at page 61), and in cases presenting an issue permitting its application, *where no extrinsic circumstances appear to exclude it,* that rule will be given its due force.

Whether the call for the monuments shall be obeyed or not, rests upon various considerations which (as here) are often resolved into a question of fact (original brief for defendants in error, pp. 14-16), the determination of which concludes *the controversy.* (*French-Glenn Livestock Co. vs. Springer,* 185 U. S., 51.) Courses and distances serve as guides to monuments only when monuments *have been actually established* (*Blasdell vs. Bissell,* quoted at page 46 of brief for plaintiff in error), or are *"unmistakable"* (*Pringle vs. Rogers,* 193 Pa. St., 94, quoted by plaintiff in error at the bottom of page 32).

We have already pointed out what is the true reason for the rule that monuments control (original brief, pp. 21, 22). That reason is stated in these words in *Pringle vs. Rogers, supra,* quoted at length on page 31 of brief for plaintiff in error:

> "It [the rule] was not framed because mistakes occurred only from mismeasurement of the surveyor or carelessness of the scrivener in recording the distance; but because experience and observation had demonstrated that the surveyor or engineer *was less likely to mistake* by sight and record the monument *at which he stopped* than his measurement and computation of the distance."

The court then added—"There is nothing in the facts of this case which takes it out of the operation of the rule"—thus recognizing, as we have contended (original brief pp. 22-27), that the "universal" and "absolute" *authority* of the rule upon which counsel so strenuously insists, is not tantamount to its universal and absolute *application;* and that there are cases where the facts, when brought to light, require the abandonment of this rule of construction and the adoption of another properly applicable to the situation disclosed. (*Hutchinson, Land Titles,* §529.)

Expressed in different words, the reason why the Pennsylvania court prefers monuments to other calls of a survey, in proper cases, is because "the marks of the survey that show *the presence of the surveyor on the lines,* and what he did to fix the place of the tract or block *on the ground,* are the monuments of his work by which *his footsteps may be followed* in later years" (*Grier vs. Pennsylvania Coal Co.,* 128 Pa. St., 79, cited by plaintiff in error, pp. 13, 37).

This necessity for the actual *observation* of the monument called for, and the actual *presence* of the surveyor at said monument, in order to locate it and *render it controlling,* is recognized in *Watkins vs. King,* 118 Fed. Rep., 537, when referring to a discrepancy between the courses and distances and the actual location of the monuments called for, it was said:

> "But that is immaterial, if it is made to appear that the natural objects called for *were really in existence* at the time of the survey, *that their location was known to the surveyor,* or that he was *at them* during the time of the survey and marked them or called for them as lines or corners thereof."

If, therefore, the surveyor never "fixed the place of the tract *on the ground*" and was never *at* the monuments pretended to have been fixed, but, on the contrary, adduced his survey and established his monuments solely by the exercise of an unrestricted imagination, the monuments so erroneously established were *not* less liable to be mistaken than the courses, distances and quantity called for by his field-notes. It is possible to follow the surveyor's theoretic footsteps, in such cases, only through the courses and distances returned by him, and, as a necessary result, the monuments called for cease to be controlling.

It is equally true that, if such monuments cannot be found, even with the "guides" given in the field-notes, the conclusion is that they are non-existent or mistaken calls and to be disregarded. The mode of procedure is then apparent, namely, to pursue the courses and distances, and, if they close and embrace the quantity of land bought and intended to be conveyed, the demonstration of their accuracy will be conclusive. (*French-Glenn Livestock Co. vs. Springer*, 35 Or., 312; 185 U. S., 53.)

The distinguished counsel for plaintiff in error become, it seems to us, strangely confused in their interpretation of the language quoted from the various authorities cited upon pages 46 to 54 of their brief, and, particularly, respecting the words of *Chief Justice Marshall* taken from his opinion in *McIver's Lessee vs. Walker*, 9 Cranch, 173 (p. 54).

> "The reason," he says, "of the supremacy of monuments is, that it is the *intention* of every grant to convey *the land actually surveyed.*"

This is not, however, all of the language employed in that connection by the Chief Justice, and a more liberal extract therefrom will even more emphatically disclose its entire accordance with the views advanced here by the defendants in error.

> "All lands are supposed to be actually surveyed, and *the intention of the grant* is to convey the land according to that actual survey; consequently, if marked trees and marked corners ***be found*** conformably to the calls of the patent,

> or if water-courses be called for in the patent, or mountains or any other natural objects, distances must be lengthened or shortened, and courses varied so as to conform to those objects.
>
> *The reason* of the rule is, that it is *the intention* of the grant to convey *the land actually surveyed*, and *mistakes* in course and distances *are more probable* and more frequent than in marked trees, mountains, rivers or other natural objects capable of being clearly designated and accurately described."

It will be observed, *first*, that, in direct antagonism to the frequent assertions of plaintiff in error, the doctrine is explicitly accepted that *the controlling element of a grant is the intention of the parties*. We have discussed this in our original brief (pp. 35 to 45).

Second. The language is carefully qualified so as to announce that, if monuments called for, either natural or artificial, be "found," they will control courses and distances. But, as shown in our former brief (pp. 19 to 27), to be "found" means their actual and visible existence, within such distance of the location indicated in the survey as not to constitute them either impossible calls (as in these cases) or calls not intended by the parties. (*French-Glenn Livestock Co. vs. Springer*, 185 U. S., 51.)

Third. The rule laid down by *Chief Justice Marshall* concedes supremacy to monuments because "*mistakes* in courses or distances *are more probable* and more frequent" than in respect of monuments. (Compare former brief, pp. 21, 22).

Fourth. It is clearly set down that grants are intended to convey *land actually surveyed*. (See also our original brief, p. 18.)

There is, however, one "universal" rule which does apply to this case, and that is, **Fraud vitiates all things.**

In order to sustain its contention, plaintiff in error must and does assert:

First. That the field-notes of a *fictitious* survey, which specify as a monument a lake *which was never seen by the surveyor*, and which does not now exist and never has existed where it was fraudulently reported by him to be located, import absolute verity and cannot be impeached; and,

Second. That (although it possesses the full quantity of land described in its patents, located exactly where it was specified, and in the form called for by the picture of the survey upon which the patentees relied) *such false and misleading monument must be unquestioningly approved and accepted by this court,* and be adopted as the basis for the application of an "absolute" and inflexible rule of construction, which will extend the grant for which the government was paid so as to include more than twice as great an area as was paid for.

Differently expressed, this court is asked to ratify and confirm the fictitious and wholly erroneous survey of the lands in question, which the Land Department has rejected, and to declare it of equal efficacy and application with the accurate product of an honest discharge of duty.

If Howe had actually run out upon the ground, and marked, the lines of the fractional lots in section 4 to conform to the present claims of the plaintiff in error (see plat, p. 43 of our original brief), his survey would necessarily have been rejected, as it would overturn the primary object of the statute, to-wit: a rectangular division of public lands by lines run to the cardinal points. By what authority, then, can this court pronounce his fictitious return to be equivalent to such an actual survey, and, thereupon, declare it lawful and controlling? In this connection, attention is directed to the plat of the subdivision of these fractional lots appearing in the report of *Kirwan vs. Murphy*, 189 U. S., upon page 43. It will be noted that there the proposed subdivision of the unsurveyed lands surrounding Cedar Island lake is entirely different from the subdivision here claimed by plaintiff in error and shown in our plat (page 43 of original brief), as well as at variance with the subdivision insisted upon by counsel for the appellees in the *Kirwan* case, appearing at page 102 of the Stanford brief. It is certain that all of these plats cannot be correct. It is equally certain that, if either be correct, the terms of the grant must demonstrate it; but it cannot be rationally asserted that any such demonstration can possibly be made.

In *Kirwan vs. Murphy, supra,* this court has already declared that the government is not bound by the fraud of the surveyor, yet the plaintiff in error urges that this adjudication be overruled by a decree in these cases adjudging it to be the owner of lands which were

not conveyed by the patents from the government, and so, indirectly, divesting the government title thereto. It has been always recognized that the administration and control of the public domain rests exclusively in the Land Department, and that courts have no power to interfere with its due performance of its functions; yet it is now insisted that this court not only can, but should, both decree a survey of the unsurveyed lands in controversy, and by the same decree, convey those lands without consideration to the plaintiff in error.

In short, *the plaintiff in error founds its entire case upon a monument concededly fraudulent*, and asks this court to except these suits from the operation of the universal rule to which we have last referred.

If the issue presented for decision in any case involve matters that render the rule advocated by plaintiff in error inapplicable or inconclusive, resort will be had to other principles. And so it has been held that if the call for the natural monument be *a false call,*—whether due to mistake or ignorance as to its true location (as in *New York Land Co. vs. Thompson*, 83 Tex., 169); or to the fact that it did not exist *where laid down by the surveyor*—although not actually non-existent (as in *French-Glenn Livestock Co. vs. Springer*, 185 U. S., 47); or to the fact that, for undisclosed reasons, the survey terminated before reaching the monument called for (as in *Horne vs. Smith*, 159 U. S.,40; *Niles vs. Cedar Point Club*, 175 U. S., 300; *Granger vs. Swart*, 10 Fed. Cas., p. 961; *Lammers vs. Nissen*, 4 Neb., 245; *Bissell vs. Fletcher*, 19 Neb., 745; *Harrison vs. Stipes*, 34 Neb., 431; *Glenn vs. Jeffrey*, 75 Ia., 20; *Grant vs. Hemphill*, 92 Ia., 218; *Schlosser vs. Hemphill*, 90 N. W. Rep., (Ia.), 842; *Barnhart vs. Ehrhart*, 33 Or., 274); or to the active purpose of the surveyor to deceive (as in this instance; *Kirwan vs. Murphy*, 189 U. S., 35)—it will be rejected, and the courses and distances specified in the survey will be adopted as the criteria of the boundaries of the premises conveyed. (See opinion Supreme Court of Minnesota, record p. 86; original brief for defendants in error, pp. 19-35).

The considerations above set forth render unnecessary a review of the authorities cited so abundantly under points First and Sec-

ond of the brief for plaintiff in error, and characterize the matters there discussed as purely academic.

III.

The Third Point in the brief for plaintiff in error (p. 58) is devoted to a consideration of what is referred to as the "degeneration" of the rule in respect of monuments in the jurisdictions of New York, Texas and Oregon.

When one's eyes are opened to the truth that the rule which is the cornerstone of plaintiff's contention is not of universal *application*, it will be readily perceived that the refusal to follow it in the cases cited from New York, Texas and Oregon indicates accurate judicial discrimination rather than degeneracy. All of the cases referred to, and many others, presented facts precluding the application of the "absolute" and "universal" rule referred to.

If the courts named are in error, they have respectable company, for, in addition to this court (*White vs. Luning*, 93 U. S., 513; *Horne vs. Smith*, 159 U. S., 40; *French-Glenn Live Stock Co., vs. Springer*, 185 U. S., 47), the same doctrine is approved by **Iowa** (*Schlosser vs. Hemphill*, 90 N. W. Rep., 842; see our original brief, p. 57); **Massachusetts** (*Hall vs. Eaton*, 139 Mass., 217, 221; **Minnesota** (Record, p. 86; *Lamprey vs. Mead*, 54 Minn., 290, 299); **Illinois** (*Fuller vs. Shedd*, 164 Ill., 462); **Maine** (*Hamilton vs. Foster*, 45 Me., 32; *Erskine vs. Moulton*, 66 Me., 276; **South Carolina** (*Colclough vs. Richardson*, 1 McCord, 167); **North Dakota** (*Heald vs. Tomsko*, 7 N. D., 422); **Nebraska** (*Lammers vs. Nissen*, 4 Neb., 425); **North Carolina** (*Cansler vs. Trite*, 5 Jones L., 424); **Vermont** (*Bagley vs. Morrill*, 46 Vt., 94); **Justice Miller** (*Granger vs. Swart*, 10 Fed. Cas., p. 961); **Justice Field** (*Field vs. Columbet*, 9 Fed. Cas., p. 12); **Pennsylvania** (*Bently vs. Rickabaugh*, 62 Pa. St., 281); **Missouri** (*Jamison vs. Fopiano*, 48 Mo., 194.

IV.

In its Fourth Point (p. 65), the plaintiff in error asserts that, if, by reason of the magnitude of the discrepancy or otherwise, the government is entitled to relief, it must be sought through reformation *in equity*.

Throughout its brief, the plaintiff in error intimates that the defendants in error rely particularly upon the fact that, if the fractional lots extend to the lake, there will be an excess of area over that recited in the patents (see pages 17, 65, 68, 80, *et al.*).

The fact of a discrepancy in area does not, of itself, effect the invalidity of any title claimed by plaintiff in error. Its force lies in its bearing upon the question of the intent of the parties to the grant, and in its probative influence upon the mind of the trial court upon the question of fraud in the survey (*Fuller vs. Shedd*, 161 Ill., 462, 482). The fraudulent and wholly fictitious character of the survey being established, it follows, as we have already shown, that the title to the land in controversy never vested in plaintiff in error. The controlling influence of this fact that the whole survey was fictitious, and that, consequently, the government is affected by it only so far as it has seen fit to convey lands in accordance with its plat, is wholly overlooked by the opposing counsel.

The defense in these cases does not rest upon the discrepancy in the quantity, but upon the facts that, because of the failure of the deputy surveyor *to make any survey at all*, and of the fictitious character of his return, the lands in question have never been surveyed and did not pass under the patents. Those patents were effectual to convey merely the lands as to which, by reason of the issuance of the patents, the government is precluded from questioning the validity of the survey and the title of its grantees, to-wit: *the lands within the boundaries delimited upon the plat.* Those boundaries do demarkate the grant as far as the government is concerned, but as to the government, the survey did not extend beyond the pretended meander line, which became the boundary of the premises conveyed.

If the land sought to be recovered had been actually—though erroneously—*conveyed* by the patents in these cases, the government might be required to have recourse to a suit in equity, if it sought to avoid the effect of the patents as to the lands *so erroneously included;* but the contention of plaintiff in error can have no force, since its title to the fractional lots actually conveyed by the patents is not assailed in these cases. The lands in dispute having never been surveyed *or patented*, no basis exists for a suit to reform the patents, and the question presented by the Fourth Point in plaintiff's brief is not before the court.

White vs. Burnley, frequently cited and much relied upon by counsel for plaintiff in error (pp. 65, 69, 78, 81, 90), has no bearing on any issue here, but serves admirably to illustrate the errant nature of counsels' attitude in these cases, and their vague appreciation of the real principles involved. The case cited bears no resemblance to these suits. The contest was between the plaintiff, holding a *senior* title to the land in question, under a Mexican land grant, and the defendant, having a *junior* title to the same land. There was no issue of boundaries presented: the limits of the grant to plaintiff were clear and undisputed, and the title to the entire tract *was conceded to have been vested in plaintiff* before the attempted grant to the defendant. The court below held, in express terms, that the survey was not fraudulent. The government acquiesced in plaintiff's title, and it was assailed by defendant solely upon the ground that the boundaries embraced an area greater than that recited in the patent. This court said:

> "Our opinion is that a regular grant (that is, *a completed title*, made by those exercising the proper political power to grant lands) is not open to this objection, by an opposing claimant setting up a younger title. * * * That a case of excess sufficiently gross could arise to justify a proceeding by suit on the part of the state of Texas, to reform a Spanish grant, we do not doubt (*U. S. vs. Hughes*, 11 How. 552); but the question here is not of reform, it is of original nullity."

That is exactly the question in these cases. There is nothing to reform, because the patents do not convey the lands occupied by defendants in error.

The case of *Gazzam vs. Phillips*, 20 How., 372, quoted by plaintiff in error on page 67 of its brief, is directly in point, and the principle there declared is controlling here.

The point now urged by the plaintiff in error was explicitly and earnestly presented to this court by the plaintiff in error in the case of *French-Glenn Livestock Co. vs. Springer*, 185 U. S., 47, and was

as distinctly overruled. In its brief filed in this court, we find this language (pp. 13-14):

> "The patents in this instance, on their face and when read in connection with the plats, conveyed all the public lands up to the line of Lake Malheur; *if by reason of any error or fraud, the survey improperly included or omitted any public land, then the obviously proper mode of correction was a bill in equity*, putting directly in issue the supposed error or fraud. To allow the apparent purpose and legal effect of the patents to be defeated upon proof of error in the plats, does not differ in principle or practical result from canceling the patents in a suit at law."

In the suit of *Kirwan vs. Murphy*, 189 U. S., 35, *this theory was again advanced before this court by the appellees*, and was again held inapplicable to facts as here disclosed. (See Mr. Hanchett's brief, pp. 37-40.)

V.

In its Fifth Point, the effect of the statutory rule of public surveys is now conceded by counsel for plaintiff in error (p. 71) to be as contended for by us, namely, that, right or wrong, the lines and corners "established" by the surveyor control (see our original brief, pp. *et seq.*). The decision in *Ogilvie vs. Copeland*, 145 Ill., 98 (cited upon page 73 of counsel's brief), was manifestly correct, and is in no respect at variance with the position of the defendants in error. In that case, the section corner established by the court had been clearly marked upon the ground, was ascertainable by measurement from another acknowledged corner, and had been recognized by parties owning lands in that vicinity as the government corner for 36 years prior to the decision.

VI.

The Sixth Point of plaintiff's brief (p. 74) presents its so-called "equities."

There are no equities that can be considered here. The plaintiff selected its forum and brought these actions at law to enforce strictly legal rights. Those rights rest solely, however, upon questions of law, as the facts are uncontroverted, and plaintiff seeks to enforce the legal rights which it assumes to issue from those facts. It asserts, and must demonstrate, as matters of law, that its patents actually conveyed the lands in dispute, and divested the government of title thereto and the Land Department of any further jurisdiction over them. If it succeed in demonstrating these things, then *Kirwan vs. Murphy*, 189 U. S., 35, must be overruled. In that case, the plaintiffs, bringing their suit *in equity*, asserted title to the remaining land surrounding Cedar Island lake *by virtue of the very equities* which plaintiff in error now suggests should be considered in its *legal* action, but this court, in reversing that case, distinctly overruled any claim of title by virtue of those equities. (See Mr. Stanford's brief, pp. 17-54.)

VII.

Under its Seventh Point (p. 79), it is urged that plaintiff in error it not chargeable with notice of the fraud on the part of the surveyor or of the discrepancy in the acreage, nor, if it were, would its rights be affected.

We have sufficiently considered these propositions in Point III, subdivision 3, pages 17 and 18 of our original brief.

VIII.

In the Eighth Point of its brief (p. 81), plaintiff in error argues that the facts that the fractional lots will conflict if an attempt be made to extend them to the lake, and that their lines must be deflected in order to accommodate the lots upon the lake, in no way concern the defendants or the government, and present no legal difficulty.

We think these facts are of grave materiality, for the reasons: (1) that they demonstrate the false character of the survey and thereby fix the pretended meander line as its limit; (2) that the law requires that all lines shall be straight lines running east and west

and north and south; (3) that the title to the lots vested in the patentees not as tenants in common, as substantially claimed by plaintiff in error (pp. 83-5, 123), but as individual grantees, at the time of the issuance of the patents; (4) that the fractional lots conveyed by the patents were instantly and severally susceptible of ascertainment (if ascertainable at all) from the terms of the grants; (5) that the boundaries of the grants were governed by some definite rule of law, and none warranting their extension as demanded by plaintiff in error is presented by it, or has ever been suggested in its behalf; (6) that unless the meander line is the boundary, the patents are void for uncertainty, since there is no legal method for determining either the course of the deflection proposed in the boundary lines or the mode of partitioning the excess land among the various owners of fractional lots.

The false natural monument called for by the survey being rejected, if the courses and distances given in the field-notes do not govern, the grants must necessarily be void for uncertainty owing to the irreconcilable interference which will occur the moment any attempt be made to extend the fractional lots. Our discussion of this subject in the original brief (paragraph (e), pp. 39-44) embraces all that we need say.

IX.

In the Ninth Point (p. 86), appears the proposition discussed upon pages 11 to 16 of our original brief, that it is not a material circumstance that Howe fraudulently neglected to perform his duty in the matter of the survey. Numerous cases are cited as sustaining this proposition, but examination will disclose that they were concerned with *valid*, and not *fictitious*, surveys. Defendants in error do not contend that chamber surveys are unlawful or void, and it would serve no good purpose to review the authorities cited by counsel. With reference, however, to the case of *Newsom vs Pryor's Lessees*, cited upon page 90, and also quoted at length upon page 22, of the brief for plaintiff in error, and greatly relied upon in support of its theory, we would say that the facts were in no respect analogous to those here presented. The survey was not a statutory one: the tract was described in the grant by metes and

bounds and not by reference to a plat; it was described as constituting 5000 acres of land *"lying on both sides of the two main forks of Duck river* beginning [at a designated point] and running thence west 894 poles to a stake *crossing the river,"* and thence by certain bounds to the place of beginning. It was a chamber survey.

The court hold that the line running west must cross the river, although it had to be extended 330 poles to reach the station, upon the recognized rule that *the intention of the parties* clearly comprehended the inclusion of the river. **In that case there was no false call for a monument.**

X.

Under its Tenth Point (p. 93), plaintiff in error insists that a meander line can never be a boundary line. We have pointed out the fallacy of this contention in our original brief under subdivision 7, beginning upon page 45.

In support of this position, the plaintiff cites many cases, a few of which may properly be here referred to, to illustrate the general nature of all the citations, and the reasons for their inapplicability to the cases at bar.

The cases of *St. P. & P. R. R. Co. vs. Schurmeier,* 7 Wall., 272 (cited at p. 96), *Hardin vs. Jordan,* 140 U. S., 374 (cited at p. 97), and *Mitchell vs. Smale, idem* 406, (cited on p. 98), were referred to and distinguished in our former brief (pp. 32-3), as was also the case of *Schlosser vs. Cruickshank,* 96 Ia., 424 (cited p. 104), at page 56 of that brief.

In *Forsythe vs. Smale,* Fed. Cas. No. 4950 (cited p. 104), the controversy was precisely the same as the issue in *Mitchell vs. Smale, supra,* the land in controversy being a jut extending beyond the boundary line of a lake which was actually surveyed and meandered, but upon the plat of which the point of land did not appear. The doctrine of the Schurmeier case was applied, and, we think, properly.

Everson vs. City of Waseca, 44 Minn., 247 (cited p. 102), presented the common phase of cases in which the rule of the Schurmeier case is held applicable. The meander line of a lake at a point opposite plaintiff's land varied somewhat, according to the field-notes, from the true water-line. The court held that the patent for

plaintiff's fractional lot carried title to the lake. There, however, the lake existed where shown on the plat; it was actually meandered, and with substantial accuracy, by the surveyor; the courses and distances named in the field-notes varied only slightly from the true meandering of the water's edge; the monument called for by the plat was present and visible, and was shown upon the plat with practical exactness. See opinion of Supreme Court of Minnesota, record, p. 84.

Lamprey vs. State, 52 Minn., 181 (cited upon pp. 103 and 108) concerned the right of the plaintiff, as undisputed riparian proprietor upon an unnavigable lake, ***which had been actually and accurately meandered by the surveyor***, to assert ownership to the bed of the lake under the common law. *Justice Mitchell* took pains to state that the government surveyor had meandered the lake in accordance with the rules and instructions of the department, and had run the meander lines substantially along the margin of the lake. He then said:

> "It will thus be seen that the question presented is, What rights in or to the soil under water does the patentee of land bounded by a meandered inland lake acquire by his patent?"

That was the only matter to which the attention of the court was directed, and the language employed in the opinion was addressed to resolving that question under the facts stated above.

See opinion of Supreme Court of Minnesota, record, p. 84.

Menosha Co. vs. Lawson, 70 Wis., 600 (cited pp. 107, 112), presented a question of boundary. The surveyor bounded his lands upon Fox river, but, at the place in controversy, on account of a small patch of swamp at a bend of the stream, ran his line of meander posts back from a post at the water's edge to the high land behind the swamp.

The parties were owners of adjoining fractional lots, and their dispute arose over the point at which the division line between them,—which (owing to the bend in the river), intersected the stream at an oblique angle—should turn in order to run to the thread of the water, for *it was conceded that the parties were riparian own-*

ers and owned the bed to the middle thread. A glance at the plat accompanying the report in 36 N. W. R., 413, will instantly disclose the situation. If the division line turned at the meander line, which here was back from the water line, and ran, at right angles to the center line of the stream, until it intersected it, a different result would be obtained than if the turn were made farther up stream where the lot-division-line, if extended to the actual water, would intersect the margin of the stream.

The rule in the *Schurmeier case* was applied, the court holding that the river and not the meander line was the boundary.

Counsel for plaintiff in error overlooks, in his deductions from this case, as in others, that the rule announced is only declared applicable to lots "which *are bounded* by a river." The case does not pretend to determine—at it was not called upon to determine—what the rule would be in respect of lots which are *not* bounded by water, the question in the cases at bar.

This authority, it is thus clear, throws no more light on the issue here than do the others referred to.

The court also held, contrary to the contention here, that *the location of the actual shore line is a question of fact, and not one of law,* and was properly investigated by the trial court.

Coburn vs. San Mateo Co., 75 Fed. Rep., 520, 530 (cited p. 107). The plaintiff there was the owner of a certain Mexican grant of land described in his patent as "bordering to the west on the sea." The whole question was, did he own, under the law prevailing in California, the beach between high and low water marks.—in other words, "tide lands?"

Olson vs. Thorndyke, 76 Minn., 399 (cited p. 111), affords no support to the contention of the plaintiff in error, but illustrates the accuracy of the position of the defendants in error. The field-notes of the survey involved in that suit, in defining the courses and distances of the meander line of the Minnesota river, showed a variation from the actual water-line, at one point, of a few rods; but *the river was actually meandered,* the variation was only casual, and the meander line returned shortly to the river's edge again. The land in question was probably one of those slight projections, the exact outline of which would have caused the surveyor unnecessary trouble to define.

The case of *Nicolin vs. Schneiderham,* 37 Minn., 63 (cited

Nevertheless, to guard against unwarranted application of the decision to cases presenting different facts, and to limit it to the case in hand, the court took pains to say:

> "There may be cases in which the error in the government survey is so gross that the purchaser of the fractional, *or supposed fractional,* subdivision of government land will *not* take to the shore of the stream or lake, although the plat of the subdivision calls for such shore as one of the boundaries. It was held that *Whitney vs Detroit Lumber Co.*, 78 Wis., 240, presented such a case. That case is cited in *Lamprey vs. Mead*, 54 Minn., 290. *But there is nothing in the record from which it can be held that this is such a case.*"

See, also opinion Supreme Court of Minnesota, record, p. 85.

The case of *Nicolin vs. Schneiderhan*, 37 Minn., 63 (cited p. 109), presented no reason for departure from the general rule as to arriving at the intention of the parties to the conveyance, and the natural monument was properly held to control the palpably erroneous notation of distance made upon the *plat*. No field-notes were produced, and, so far as appeared, the plat notation of figures was a mere clerical error—not a fiction. Of course, in that case, there could be no possible doubt as to the intent of the grant.

Heald vs. Minisko, 7 N. D., 422 (cited p. 114), disclosed a situation such as the court quoted and applied the rule of the Schurmeier decision. It took pains, however, to point out the distinction existing between cases where it was applicable, and those instances (like the cases at bar) in which the rule could not be controlling at all. It referred to *Lammers vs. Nissen* and *Bissell vs. Fletcher* (referred to upon pp. 51-2 of our former brief) and, stating the facts upon which they rested, said:

> "Each case announces the principle that 'in the surveys of the public lands of the United States the meander lines are generally considered as following the windings of streams; but the question whether they do so or not is a question

> of fact, to be determined by evidence aliunde.' And in each case it was held that, where the meander line did not in fact follow the shore line, the fact that it was designated on the map as a meander line was not conclusive on the government, and did not estop it from claiming the land between such pretended meander line and the shore line. *We think those cases were correctly decided under their facts.* They concede the rule to be well settled that a meander line bordering on the bank of a stream is not to be considered as the boundary of the tract, but simply as defining the sinuosities of the bank of the stream, and as a means of ascertaining the quantity of land in the fraction subject to sale."

The remaining cases cited by counsel for plaintiff in error are of the same character as the foregoing, and none of them afford any foundation for the doctrine to which they are cited.

XI.

Under the Eleventh Point (p. 115), the authorities for the defendants in error are reviewed and sought to be distinguished. There is no propriety, of course, in our following, in this brief, the vain attempt. It is noticeable, however, that the case of *Kirwan vs. Murphy*, 189 U. S., 35, is ignored entirely by counsel. It is also noticeable that, with regard to *French-Glenn Livestock Co., vs. Springer*, the attitude assumed heretofore has been abandoned, to the effect that the case, although in point, rested upon no better authority than *Grant vs. Hemphill*, 92 Ia., 218, which counsel deemed to be overruled by *Schlosser vs. Cruickshank*, which view, indeed, they reiterate in another part of their brief in this court (page 135).

The *Springer* case receives further attention, however, since it has been affirmed by this court, upon pages 119-122, where it is stated that it is simply a cross between *Horne vs. Smith* and *Niles vs. Cedar Point Club*. We do not assume to pass upon this proposition, but we do assert that, if that case were rightly decided, the judgments now before this court must be affirmed, for there is no

distinction which can be drawn between the facts as presented by the two records. This will appear by reference to the record of the case in this court, as well as by reference to pages 13, 15-16 of our former brief.

In regard to the case of *Granger vs. Swart*, 10 Fed. Cas., p. 961, which was a decision by *Mr. Justice Miller* sitting as Circuit Justice, counsel pass severe judgment upon the learned judge named (pp. 125-130), and strive to overcome the authority of most of the decisions cited by defendants in error, for the reason that "almost every one has its root in the manifestly erroneous charge" delivered in the case referred to. It is enough to say that the principles enunciated by *Mr. Justice Miller* in that case have become the acknowledged law of many states and have been promulgated by this court in *Horne vs. Smith*, *Niles vs. Cedar Point Club*, and *French-Glenn Livestock Co., vs Springer*. The only adverse criticism of the case which has ever come to our attention has been in the briefs of counsel for plaintiff in error.

As stated by *Mr. Justice Brewer*, (*Horne vs. Smith*, 159 U. S., 45), "cases of this nature are naturally few in number." Yet counsel for plaintiff in error would have it that they are as plentiful as blackberries, and that all of them with the exception of *Granger vs. Swart* and those cases (which are the "few" alluded to by *Mr. Justice Brewer*) which have followed its "indefensible assumption," support their contention.

Every material contention of the plaintiff in error in these cases was urged in this court in the brief filed by the plaintiff in error in the case of *French-Glenn Livestock Co., vs Springer*. It was there, as here, insisted:

That monuments control absolutely and in all cases over courses distances and quantity (pp. 17, 23, 24-5);

That the official survey of the lake, and the plats and maps made thereunder, showing land to abut upon a meander line, conclusively establish the lake depicted upon the plat as the actual boundary of the land (pp. 10-13);

That the right of access, and the superior value of a water frontage, cannot be denied to a purchaser buying in reliance upon a plat showing such frontage (pp. 27-8);

That the relief, if any, against the extension of such grant to the actual lake, must be sought in equity (pp. 13, 14);

That the fraud or error of a surveyor is an immaterial circumstance (pp. 25-26);

That the fact of a discrepancy of a mile or more between the meander line and the actual lake is unimportant, and in no manner precludes the extension of the grant to the lake, wherever it may be found (pp. 20-24);

That a meander line is not a boundary, but demonstrates that the water purported to be portrayed upon the plat is the true boundary (pp. 16, 17); and

That the government is estopped by acts of its surveyors, whether they are erroneous or fraudulent (pp. 27-8).

And the same attempts were made to distinguish, if not to impeach, the doctrine of the authorities relied upon by the defendants in error here (pp. 29-31).

In short, no phase of these cases as now presented has not been carefully and patiently examined and decided by this court in the suit referred to and in *Kirwan vs. Murphy*, 189 U. S., 35.

The answer to all the contentions of the plaintiff in error is found in the opinions of this court in those cases.

Under that answer the fundamental proposition of plaintiff in error, that "the case is governed by the elementary rule that monuments prevail over courses, distances and quantities," cannot be sustained, and it is submitted that the conclusion of the Supreme Court of Minnesota, must be affirmed, as it it stated upon page 86 of the record in these words:

> "This case, then, is one where the call for the natural monument, the lake, must be disregarded, for the admitted facts show that it is an impossible call, and that if it is rejected the courses and distances and the meander line will exactly close and give to the plaintiff the precise quantity of land bought from the government and paid for. It falls within the rule, that, a meander line is not, as a general proposition, a boundary line, yet the boundaries of fractional lots will not be indefinitely extended

where they appear by the government plat to abut on a body of water which in fact has never existed at substantially the place indicated on the plat. In such exceptional cases, the supposed meander line will, if consistent with the other calls and distances indicated on the plat, mark the limits of the survey and be held to be the boundary line of the land it delimits."

GEORGE P. WILSON,

JOHN R. VAN DERLIP,

R. R. BRIGGS,

Counsel for defendants in error.

Supreme Court of the United States.

No. 127.—October Term, 1903.

The Security Land and Exploration Company, Plaintiff in Error, vs. G. A. Burns et al.	In error to the Supreme Court of the State of Minnesota.

[February 29, 1904.]

This is an action of ejectment, commenced in the District Court of St. Louis County, in the State of Minnesota, to recover certain lands in that county described in the complaint. The trial was by the court, and judgment was entered for the defendant, which was affirmed by the Supreme Court of Minnesota, and the plaintiff has sued out this writ of error to review that judgment. (Minn. .)

The following facts (among others) were found by the trial court;

"1. The plaintiff is a corporation duly organized and existing under the laws of the State of Minnesota, and the defendants are husband and wife.

"2. In 1876, township fifty-seven north of range seventeen west, in St. Louis County, Minnesota, was ordered by the General Land Office of the United States to be surveyed, and a contract for the survey thereof was made by the United States surveyor general of the State of Minnesota with one H. S. Howe, who, by said contract, was constituted a deputy United States surveyor for said purpose. Under said contract said Howe was required and undertook and agreed to survey said township, to run out all section lines, and to set posts making all section and quarter section corners throughout said township where the same could be marked upon the ground, and accurately to meander and establish upon the ground meander posts of all lakes and streams found to exist within said township.

"3. Thereafter said Howe ran and marked the exterior lines of said township, except the south township line, which had been previously surveyed, and set posts at all section and quarter section corners on said three exterior lines. He also set a meander post upon the north line of said township as surveyed by him, where said line running west from the northeast corner of said township first encountered the shore of Ely Lake, or, as it is sometimes called, Cedar Island Lake.

"4. No survey of the interior of said township was ever made, and no section lines within said township were ever run by said Howe, with the possible exception of the west line of section 36 thereof, and no section or quarter section corners were ever located, established or marked by him (with the possible exception of the northwest corner of section 36 aforesaid), and none of the streams or permanent lakes (of which there were several) within said township were meandered by him, and no posts of any description were ever set, nor any lines or bearing trees ever blazed,

within said township, with the possible exception of a corner post at the northwest corner of said section 36.

"5. Said Howe made and filed with the United States surveyor general of the State of Minnesota what purported to be field notes of a survey of said township made by him under said contract, purporting to give the length and directions of all interior section lines in said township, the location of all sections and quarter section posts, and the bearing trees thereof, the character of the soil and timber in said township, and all other data and information required by the statutes of the United States and the rules of the United States General Land Office, to be ascertained and reported by deputy surveyors in due course of making surveys of public lands.

"6. With the exception of the description of the survey of the three exterior boundary lines of said township actually run by him, said field notes returned by said Howe were imaginary and fictitious, and the purported facts and data contained therein were not based upon any personal knowledge or inspection of the interior of said township, and were, in fact, false and erroneous.

"7. From said purported field notes it appears that there existed in the northerly part of said township, lying in sections 2, 3, 4, 9, 10 and 11 thereof, a lake known as Ely Lake, or Cedar Island Lake, with surface area, as indicated in said field notes, of eighteen hundred acres; in fact, instead of having an area of about eighteen hundred acres, said lake then was and still is a body of water not exceeding eight hundred acres in area. It is a permanent, deep and navigable lake, having high, steep and heavily timbered banks, except about the outlet thereof. Said lake does not, in fact, touch section 11 at all, and covers only an area of very small extent (less than one-half of a forty-acre tract) in the southeast corner of section 4. Between the actual water line of said lake and the meander line thereof, as returned by the purported field notes of said Howe, there were at the time of the survey, and still are, at least one thousand acres of high, tillable land, which has never been a part of the lake, and which was and is heavily timbered with trees of more than a century's growth and growing down to the water's edge.

"8. The field notes and report of survey made and filed by said Howe were approved by the surveyor general for the district of Minnesota, August 7, 1876, and a plat of said township was made in accordance with said purported field notes under the direction of said surveyor general, and was approved by him on said 7th day of August, 1876, and a duly certified copy thereof was transmitted by him to the proper local United States land office on the 24th day of August, 1876, and another duly certified copy of the same was by him forwarded to the General Land Office of the United States, and filed therein August 23, 1876, and was by that office accepted as representing a correct survey of said township and as the official plat thereof. Such survey and plat of said township were the only ones ever made by or under the authority of the United States government."

[The plat which is to be found at page 43 of 189 United States Reports, illustrates with sufficient accuracy the township in which the lands in question lie, and it delineates the meandering of Cedar Island Lake, the outer meander line representing that which was marked on the official plat of the survey and as shown by the field notes of Howe, and the inner

meander line representing the lake as it actually existed in 1876, when the field notes were made and filed, and as it now exists. A portion of the land lying between these lines is the land involved in this action, being land lying between the lake and the lots 3, 5, 6 and 7, in section 4, of the township mentioned.

The dotted lines on the plat show the courses which would have to be followed in order to permit each of the lots above named to reach the lake as it actually exists.]

"9. Since the spring of 1892, the defendants have been in actual and continuous occupancy of a portion of the land lying between the meander line described and returned by said Howe in his said purported field notes, and as located upon the government plat of said township, and the actual water line of said lake. Said occupancy has been under the claim that the lands occupied by said defendants were and are unsurveyed government lands subject to homestead entry, and that they have not been patented by the government. The defendants have made valuable and lasting improvements upon the lands occupied by them respectively.

"10. According to the plat of said township, the land in section 4 was divided into eight fractional government lots, lots 1, 2 and 8 comprising all of the land in the east half of said section, containing an aggregate of 122.3 acres, and lots 3, 4, 5, 6 and 7 containing an aggregate of 182.08 acres, comprising all of the land in the west half of said section.

"11. Between December, 1879, and March, 1887, all of said government lots [and all the surveyed lands within said township] were patented and conveyed by the United States, pursuant to the laws relating to the disposal of public lands, and by patents containing the usual clause, 'according to the official plat of the survey of said lands returned to the General Land Office by the surveyor general.' By divers mesne conveyances from said patentees, the title to said lots 3, 5, 6 and 7, containing according to said plat and to the patents of said lands, the following quantities of land, respectively: Lot 3, 50.37 acres; lot 5, 34.75 acres; lot 6, 30.5 acres; and lot 7, 25.25 acres; became vested in the plaintiff in the year 1891 and prior to the commencement of the actions; and the plaintiff is still the owner thereof, and, as such owner, has within the boundary of said lots, as shown upon said plat, and within the meander line of said lake described in said field notes, the full quantity of land above described as contained therein.

* * * * * *

"If the side lines of said lot three were produced and extended in straight lines southerly from its southern boundary, as shown upon the government plat, and as herein found and determined, and the said lot was so extended to the southerly boundary of said section 4, then in that event the said lot would not touch said Ely Lake, nor would there be any lake frontage thereon, and said lot would then contain one hundred and sixty acres of land; neither would said lines nor said lot reach said lake, no matter how far extended.

"If the side lines of said lot five were produced and extended easterly from the eastern boundary of said lot, as shown upon the government plat, and as herein found and determined, to the eastern boundary of said section 4, the northern line of said lot following the old meander line of

said lake, and the southern line of said lot being produced and extended in a straight line, and said lot was so extended, then in that event the said lot would not touch said Ely Lake, nor would there be any lake frontage thereon, and said lot would contain about one hundred and twelve acres of land.

"If the side lines of lot six were produced and extended in straight lines easterly from the eastern boundary of said lot, as shown upon the government plat and as herein found and determined, to the eastern boundary of section 4, and said lot was so extended, then in that event the said lot would not touch said Ely Lake, nor would there be any lake frontage thereon, and said lot would then contain one hundred and sixty acres of land.

"If the side lines of said lot seven were produced and extended in straight lines easterly from its eastern boundary, as shown upon the government plat and as herein found and determined, to the eastern boundary of said section 4, and the said lot was so extended, in that event the south line of said lot would touch said Ely Lake, and a few feet of lake frontage would then be contained in said lot, and said lot would contain about one hundred and thirty-nine acres of land.

"I further find that it would be impossible to extend said lots within their respective side lines, as above specified, without instant and irreconcilable interference with each other, and that no one of said lots has any prior or superior right over any of the others to be so extended."

Mr. Justice PECKHAM, after making the foregoing statement of facts, delivered the opinion of the Court.

The land in controversy in this case is described in the foregoing statement of facts, and it lies between the meander line as it appears on the plat of the survey referred to in the patents and the actual borders of the lake. (See the sketch of the plat at page 43 of volume 189, United States Reports.) Regarding the question of the boundaries, counsel for plaintiff in error assert in their brief that if distance is to prevail, then the land in controversy is an unsurveyed strip lying between the lots of the plaintiff in error and the lake; while if the natural monument is to prevail, then the strip of land in controversy is part and parcel of the lots of the plaintiff in error. The boundaries of the lots as shown upon the plat of survey giving the so-called meander line of the lake, described in the field notes, are unquestionably correct, so far as the three sides of the fractional lots are concerned, and the only difference is as to the side which purports to front on the lake. In regard to this fourth side, the plaintiff in error, as a remote grantee from the patentees, bases its claim to the land lying between the meander line and the lake, upon the grounds that the patents conveying the lots to the patentees contained the clause: "According to the official plat of the survey of the said lands returned to the General Land Office by the surveyor general;" that the plat of the survey of the lands, by reason of such reference, became a part of the

grant described in the patents; that the plat showed, as the fourth side of the land granted, a meander line around Cedar Island Lake; that the lake thereby became a natural monument or boundary, and that although the plat of the survey turns out to have been a mistake as to the position of the lake, and the line was, therefore, not in truth anything like an accurate meander line, yet by reason of that plat and of that line, which assumed to show the borders of a lake, the patentees had the right to claim that they bought in reliance upon and that they were entitled to a boundary upon a lake.

In support of these contentions the plaintiff in error cited *Cragin* v. *Powell*, (128 U. S. 691,) and *Jefferis* v. *East Omaha Land Co.*, (134 Id. 178, 194,) as to the effect of a grant according to an official plat of a survey referred to in the grant, and to the cases of *M'Iver's Lessee* v. *Walker*, 1815, (9 Cranch, 173;) *Newsom* v. *Pryor's Lessee*, 1822, (7 Wheat. 7;) *County of St. Clair* v. *Lovingston*, 1874, (23 Wall. 46;) *Land Company* v. *Saunders*, 1880, (103 U. S. 316,) and other cases, affirming the general rule that, in matters of boundaries, natural monuments or objects will control courses and distances.

These general rules may be admitted. The rule as to natural monuments is not, however, absolute and inexorable. It is founded upon the presumed intention of the parties, to be gathered from the language contained in the grant, and upon the assumption that the description by monuments approaches accuracy within some reasonable distance, and places the monument somewhere near where it really exists. (*White* v. *Luning*, 93 U. S. 514; *Ainsa* v. *United States*, 161 U. S. 208, 229; *Baldwin* v. *Brown*, 16 N. Y. 359; *Buffalo &c. Railroad Company* v. *Stiegler*, 61 Id. 348; *Higinbotham* v. *Stoddard*, 72 Id. 94; *Hall* v. *Eaton*, 139 Mass. 217.) These cases illustrate somewhat the principle upon which the general rule is founded, and show how far it has, upon occasion, been regarded as inapplicable. The patents mention the number of acres contained in each lot, and that number is stated in the eleventh finding of the trial judge, which is set forth in the foregoing statement of facts. The difference between the number of acres stated in the patents to be in each lot and the number now claimed by the plaintiff in error is very large, and is subsequently referred to herein. It seems plain that the intention was to convey no more than the number of acres actually surveyed and mentioned in the patents. In Ainsa's case (*supra*), this is deemed to be a very important and sometimes a decisive fact. It is true that many cases cited by the plaintiff in error have enforced the superiority of natural monuments over courses and distances where the difference in the amount of the land conveyed as between the two classes of description was also very great. In the case at bar, while there is a great difference in the amount of land so described, there are at the same time other facts which are material and

which in our opinion, when considered in connection with this difference, justify and demand a refusal to be controlled by the borders of the lake as a boundary.

It is well to see what the facts in this case were upon which the State court founded its decision. They are set forth in detail in the foregoing statement of facts, but a few of the more important may be here referred to.

There was, in truth, no such survey as was called for by the contract between the government and the surveyor. The exterior lines, with the exception of the south line of the township, were run, but no survey of the interior of the township was ever made and no section lines thereof were ever run, with one possible exception, and in truth the survey as a whole was a fraud. No such body of water at the place indicated on the plat of survey then existed or now exists. On the contrary, the lake is from half a mile to a mile away from what is called its meander line on the plat of the survey filed by the surveyor. It covers only about twenty acres in the southeast corner of section 4. The surveyor never was on the ground and never saw the lake he pretended to measure, and the lake never existed where he laid it down in his fraudulent survey. If the side lines of the various lots were protracted in their course, those of lot 3 would never reach the lake, and those of lots 5 and 6 would not reach the lake within the limits of section 4, while the south line of lot 7 would touch the lake, and a few feet of frontage would then be secured, and that lot would then have 139 instead of 25.25 acres. The side lines of lots 5, 6 and 7, if protracted, would instantly cross the protracted side lines of lot 3. There are at least 1,000 acres of high, tillable land between the actual water line of the lake and the meander line as returned by the field notes and the plat of survey, and the land is covered by trees of more than a century's growth and growing down to the water's edge. In order to bound on the lake the lots would exhibit a totally different form from that which they take on the plat of survey and such boundary would violate every rule of statutory survey, by conveying lands not conforming to the system adopted by the government and carried out ever since its adoption.

The patentees, it must also be borne in mind, get all the land they really purchased and paid for, as laid down by the lines and distances set forth in the survey and as stated in the patents. These lines and distances (of lots 3, 5, 6 and 7) gave the patentees 140.87 acres of land, and that was the amount they paid for, while if the fourth line of the boundary of the lots were taken out and others substituted in the way shown by the dotted lines in the plat in 189 U. S. (*supra*), and so as to reach the borders of the lake as it then actually existed and now exists, they would get 571 acres, or fourfold more land than was actually mentioned and described in the patents conveying these four lots, or than they supposed they were purchasing, or than they actually paid for.

Upon these facts the question recurs whether the patentees by reason of the general rules above mentioned took these lands which they now claim, although they never in reality bought or paid for them. We think they did not; that the rules have no application to a case like this, and that plaintiff in error must be confined to the lots which are correctly described within the lines and distances of the plat of survey and of the field notes and which the patentees actually bought and paid for.

The fraudulent character of the survey, the non-existence of the lake within at least half a mile of the point indicated on the plat, the excessive amount of land claimed as compared with that which was described and stated in the patents and actually purchased and paid for, the difficulty in reaching the lake at all, and the necessity in order to do it of going outside of section 4, (with the exception as to a small part of lot 7), the section in which the description and plat placed all the land, all go to show that the lake ought not to be regarded as a natural monument within the cases, or within the principle upon which the rule is founded, and therefore the courses and distances by which the amount of land actually purchased and paid for was determined, ought to prevail.

The non-existence of a lake anywhere near the spot indicated on the plat is a strong reason for regarding the so-called meander line as one of boundary instead of a true meander line, and when the plat itself is the result of a gross fraud, and indeed is entirely founded upon it, the reason for refusing to recognize the lake as a boundary becomes apparent.

The land actually purchased and paid for was conveyed and covered by the description by courses and distances set forth in the field notes and referred to in the patents, and the government is concluded as to such land, but the implication of a boundary by the lake as delineated on the plat of survey, which might otherwise be made, will not be permitted when it is based upon such facts as have been already adverted to in this case. Giving the patentees all the land in acres, stated in the patents and described and contained in lines and distances in such patents, and which is all they paid for, protects them, and the government ought not to be further concluded by the fraudulent acts of a public officer.

As is said in the trial court in this case, there must be some limit to the length courts will go in search of the water delineated on a plat of survey, with a meander line shown thereon. If the water were ten miles away, it is certain that a claim to be bounded thereon would not for one moment be admitted. A distance of half a mile, enough to plainly show the gross error of the survey, together with the other facts adverted to herein, are sufficient to justify a refusal to apply the general rule that a meander line is not usually one of boundary.

Nor in such case is it necessary to go into equity to reform the patent. Where the patentee has in fact received and is in possession of all the

land actually described in the lines and distances, and is seeking for more on the theory that his plat of survey carries him to the water, a denial of that claim upon such facts as appear here is well founded, and requires no reformation of the patent. It is simply a question of boundary, and it is a legal defense, it is but a denial that the land claimed is in fact included in the patent as it exists, and no aid of a court of equity is necessary to sustain such a defense.

We think the *French-Glenn Live Stock Company* v. *Springer*, (185 U. S. 47,) is authority which calls for the affirmance of this judgment. In that case the plaintiff claimed under patents from the United States, which referred to the official plats of the survey, and by which it appeared the township was rendered fractional by abutting upon the meander line along the south side of Malheur Lake, which plat appeared to have been approved by the Land Department of the government, and the plat showed the lots as bounded "north by the meander line of Malheur Lake." The field notes of the survey of the exterior boundaries of the township and its subdivisions and the meander line of Malheur Lake itself, under the title heading "Meanderings of the south shore of Malheur Lake through fractional township 26," &c., indicated that it was run "with the meander of the lake." The plaintiff in that case claimed title to land which was just north of this meander line on the ground that such land was a portion of the lake when the survey was made and the meander line run around it; that the water had since receded because of certain facts stated, and that plaintiff was entitled to the land thus uncovered, as an accretion by way of reliction to his adjoining land. The defendant disputed this claim, and asserted that when the survey was made and the plat thereof, with its meander line, was referred to in the patent, there was in fact no such lake anywhere near that spot, and the so-called meander line was in truth a line bounding plaintiff's land and limiting him thereby so that he could not go beyond it in order to find the lake which plaintiff claimed as a boundary. This court held that the line, which appeared on the plat as a meander line of the lake, was in truth a line of boundary beyond which the plaintiff could not go in search for the lake. The question of fact as to which of the two contentions was right, the receding of the water or the non-existence of the lake at the time of the survey, was submitted to the jury, and that body found in favor of the defendant's theory. The result of the decision was to refuse to consider the lake as a natural monument, because it did not exist at any point near where it was placed on the plat. What purported on the plat to be a meander line was held not to be one, but on the contrary it was held to be a boundary of the land of the plaintiff, beyond which he could not go. After speaking of the question of fact and its decision by the jury in favor of the defendant, Mr. Justice Shiras, in giving the opinion of the court, said:

"The land in dispute, in the possession of the defendant in error, was not included within the lines of the original survey, nor in the description of the lots contained in the patents and in the deeds of conveyance under which the plaintiff in error holds, and to add the land in controversy to the lots so described would more than double the area of the land claimed by the plaintiff in error; but the contention of the plaintiff in error was, in the courts below and now is, in this court, that, as the plaintiff in error bought in reliance upon the plats and patents which showed the meander line of the lake, such plats and patents must be deemed to conclusively establish that the lake was the northern boundary of the land, so far as the rights of riparian grantees are concerned. . . .

"While it may be conceded that the descriptions of the lots contained in the survey, plats and patents are conclusive as against the government and holders of homesteads, so far as the lands actually described and granted are concerned, such conclusive presumption cannot be held to extend to lands not included within the lines of the survey, and which are only claimed because of the alleged existence of a lake or body of water bounding said lots, whose recession has left bare land accruing to the owners of the abutting lots. We agree with the Supreme Court of Oregon in thinking that the question whether the northern boundary of the lots of the plaintiff in error was an existing lake, the recession of whose waters would leave the bed of the lake, thus laid bare, to accrue to the owner of the lots, was a question of fact which was not concluded by a mere call for a meander line. If, indeed, there had been a lake in front of these lots at the time of the survey, which lake had subsequently receded from the platted meander lines, the claim of the owner of the lots to the increment thus occasioned might be conceded to be good, if such were the law of the State in which the lands were situated. But if there never was such a lake—no water forming an actual and visible boundary—on the north end of the lots, it would seem unreasonable, either to prolong the side lines of the survey indefinitely until the lake should be found, or to change the situs of the lots laterally in order to adapt it to a neighboring lake. The jury having found that the facts under this issue were as claimed by the defendant in error, the conclusion must be that the rights of the plaintiff in error must be regarded as existing within the actual lines and distances laid down in the survey and to the extent of the acreage called for in the patents, and that the meander line was intended to be the boundary line of the fractional section."

In the above cited case the important point to be considered is that the court refused to be bound by the appearance on the plat of survey showing a meander line of the lake when the fact was found by the jury (and exists in this case) that at the time of the survey there was no such lake existing at any point near where it appeared to be on the plat, and that under those circumstances a meander line appearing on the plat would be and was regarded as a line of boundary to the exclusion of what was claimed to be a natural object, namely, the lake itself.

It is not important that the plaintiff's claim was founded upon the allegation that the land there in question was the result of a subsidence of the water of the lake, and that he was, therefore, entitled to such land by

reason of accretion. The point lies in the fact that what appeared as a meander line on the plat was treated as a boundary line and the lake was held not to be such boundary, for the reasons stated in the opinion. Those reasons exist in full force in this case, only here the disparity between the amount of land conveyed and paid for and the amount now claimed is double that stated in the case cited. Mr. Justice Shiras in the course of his opinion, refers to other cases in this court as authority for the proposition that a meander line may be in some cases a line of boundary limiting the land conveyed or described by the line itself, and not by any body of water. See *Niles* v. *Cedar Point Club*, (175 U. S. 300, 308;) *Horne* v. *Smith*, (159 Id. 40.) Upon this subject it was well said by the State Supreme Court in this case as follows:

"The official plat was only intended to be a picture of the actual conditions on the ground, but the fraudulent mistake in the plat in this case was so gross that no man actually viewing the premises could possibly be misled or believe that the shore line of the lake was intended as the boundary line of the lots. He would understand at once that the meander line as traced on the plat was the actual boundary line of the lots. This case then is one where the call for the natural monument, the lake, must be disregarded, for the admitted facts show that it is an impossible call, and that if it is rejected the courses and distances and the meander line will exactly close and give to the plaintiff the precise quantity of land bought from the government and paid for. It falls within the rule that a meander line is not, as a general proposition, a boundary line, yet the boundaries of fractional lots will not be indefinitely extended where they appear by the government plat to abut on a body of water, which in fact has never existed at substantially the place indicated on the plat. In such exceptional cases the supposed meander line will, if consistent with the other calls and distances indicated on the plat, mark the limits of the survey, and be held to be the boundary line of the land it delimits."

That this was a fraudulent survey cannot be denied. Still, the government is concluded by such survey, so far as the lands actually described, granted and paid for are concerned, but it will not be concluded in regard to other lands, which were not within the lines of the survey, and which are only claimed because of the alleged existence of a lake or body of water bounding said lots, when such lake or body of water is in fact and always has been more than half a mile away from such lots, and where the patentee has received all the land that he actually paid for.

It appears from the various reports of the case of *Kirwan* v. *Murphy*, cited by plaintiff in error, that the government was intending to make a survey of that portion of this township lying between the alleged meander line and the actual lake, as unsurveyed land, when certain grantees of patentees of lots, which by the plat of survey bounded on the lake, commenced proceedings to obtain an injunction to prevent what was alleged would be a resurvey. The case is first reported in 83 Fed. 275, where the opinion

of the Circuit Court of Appeals is given upon affirming the order granting the injunction. The case was then tried, and the decision of the United States Circuit Court in Minnesota, upon such trial, directing judgment for the plaintiffs, is reported in 103 Fed. 104, and upon appeal the decision of the United States Circuit Court of Appeals for the Eighth Circuit, affirming the judgment, is reported in 109 Fed. 354. Those courts were of opinion that the Land Department had no right to make the proposed survey, and that the fractional lots went to the lake, and the government could not revoke its grant and correct the survey so far as regarded the patentees, or their grantees, in good faith. Upon writ of error from this court the judgment was reversed for the reason that the remedy by injunction was not proper, and also because the Land Department was vested with the administration of the public lands and could not be divested by the fraudulent action of a subordinate officer outside of his authority, and in violation of the statute. The exact point involved here was not presented in that case, and this court held that it could not be passed upon in that proceeding. (189 U. S. 35.)

For the reasons we have stated, we cannot concur in the conclusions of the lower Federal courts, that the patentees had the right to bound their lots by the lake as it actually existed. The judgment is

Affirmed.

No. 128.

The Security Land and Exploration Company, Plaintiff in Error, *vs.* Henry Weekey et al. } In error to the Supreme Court of the State of Minnesota.

[February 29, 1904.]

Mr. Justice PECKHAM delivered the opinion of the Court.

In this case land in the same section as in the foregoing case is involved, and as the title depends upon precisely the same facts, this case is by stipulation of counsel to abide the event of the other.

Judgment affirmed.